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ABSTRACT

This is the first issue of a new journal designed to keep elementary and secondary school teachers and students up-to-date with developments in law-related education. The focus of this issue is on equal protection. Two major articles review recent Supreme Court cases and examine historical cases of segregation. Other features explain how schools can get money for innovative programs from Law Enforcement Assistance Administration (LEAA) groups; describe a successful district-funded program in Oregon; and list law-related audiovisual materials appropriate for elementary and secondary classes. Two sections entitled Newsclips and Court Briefs contain short reports on topics such as school violence, student social attitudes, rights of nonunion teachers, and lawyer-client confidentiality. Issued three times each school year by the American Bar Association Special Committee on Youth Education for Citizenship, the journal will provide recent information about legal cases, curriculum materials, funding opportunities, project activities, program ideas, coming events, and other news and views in the field. Subscription cost will be approximately five dollars for three volumes issued in January, April, and September. The first several issues will be distributed on a complimentary basis. (Author/AV)

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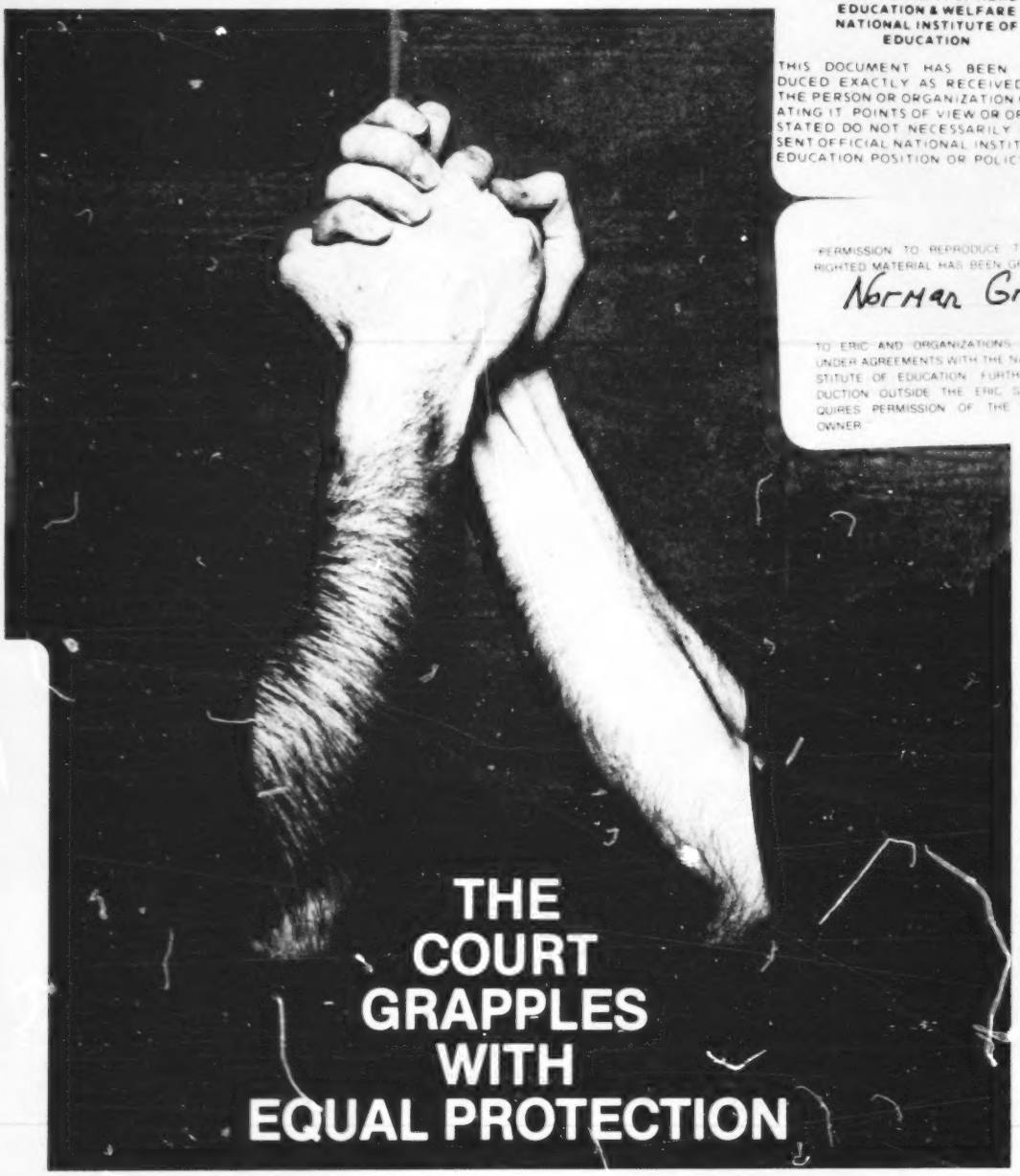

THE COURT GRAPPLES WITH EQUAL PROTECTION

OPENING STATEMENT

Law-related education, like the law itself, is dynamic and constantly evolving. Since the early '70s alone, there has been dramatic growth in law-related programs and materials, reflecting a rich variety of topics and approaches. These activities are continually being refined while new and expanded efforts are being instituted.

To keep you informed of these developments, YEFC has published directories, curriculum catalogues, guides to program development, listings of summer teacher education institutes, and other materials. Oftentimes, however, developments in the field outran our ability to publish revised and up-to-date editions of these publications.

In addition, many of you have expressed your desire for a ready source of information about the latest developments in the law, particularly court decisions in areas commonly covered in your courses.

Update is designed to fill these needs by providing—three times each school year—recent information about legal cases, curriculum materials, funding opportunities, project activities, program ideas, coming events, and other news and views in the field. Special features such as innovative instructional approaches and guest commentaries on critical legal and educational issues will also be included. We will, of course, also continue to publish our *Working Notes* series on a regular basis.

To a significant degree, you the reader will be the contributors and editors of *Update*. We urge you to send us materials and information for subsequent issues, to share ideas for new sections and discussion topics, and to offer your candid reactions to this and subsequent issues. To assist you in this regard, a questionnaire is included in this issue.

The first several issues of *Update* will be distributed on a complimentary basis and serve as pilots for more comprehensive issues which will be available by subscription. We hope you enjoy *Update* and find it a useful adjunct to your law-related education program.

—Norman Gross

American Bar Association
Special Committee on Youth Education for Citizenship

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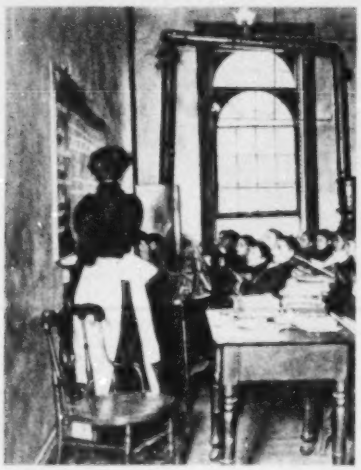

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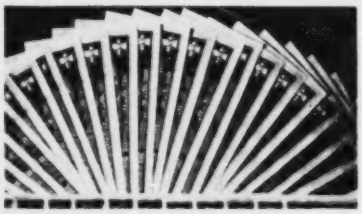

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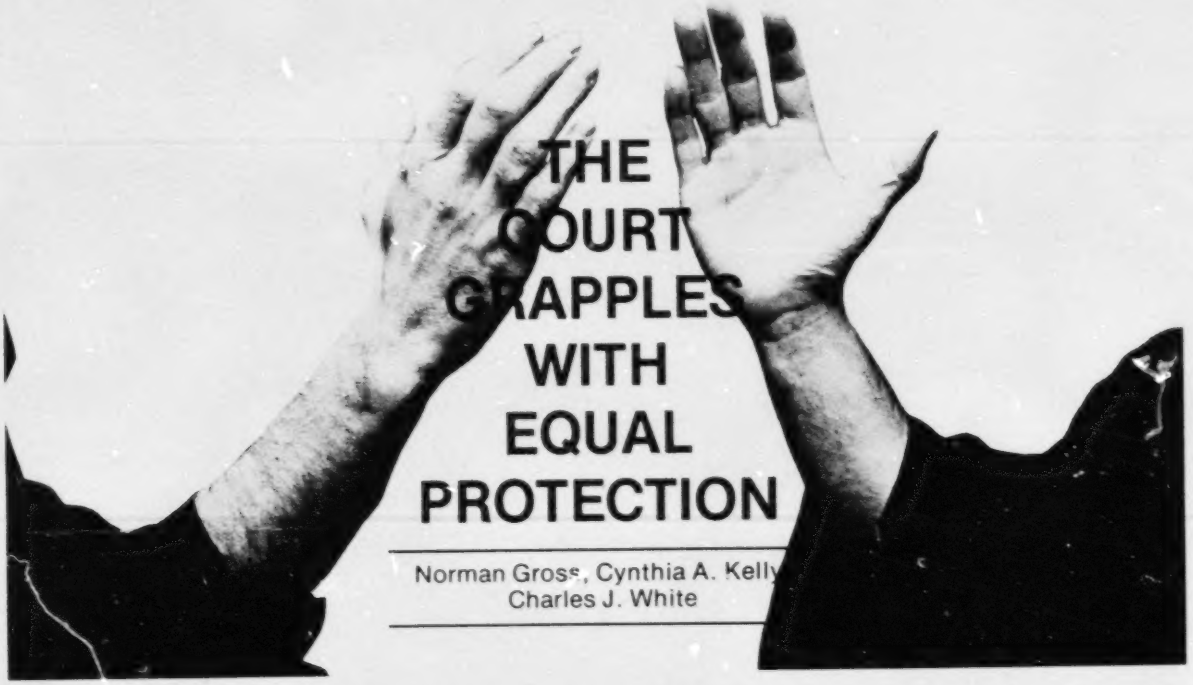

THE COURT GRAPPLES WITH EQUAL PROTECTION

Norman Gross, Cynthia A. Kelly
Charles J. White

What does a would-be beer drinker in Oklahoma have in common with prospective black residents of an Illinois suburb, a group of Orthodox Jews in Brooklyn, and a disappointed white applicant to a California medical school? All of them have felt that they have been treated unfairly under the law and have filed suits charging that they've been deprived of their constitutional right to equal protection. In addition, each of their cases has reached the U.S. Supreme Court, providing us with some notion of the Court's interpretation of this constitutional guarantee and its impact on our daily lives.

The Craig Case: Discrimination on the Basis of Sex

The Fourteenth Amendment provides that no state shall deny to any person "the equal protection of the laws." This standard is easy to meet when a particular law affects everyone equally. What happens, however, when individuals in similar situations are treated differently under the law?

In the recent case of *Craig v. Boren* (45 U.S.L.W. 4057, December 20, 1976), an Oklahoma law prohibited the sale of "non-intoxicating" 3.2% beer to males aged 18-20 years old. Nineteen year old Curtis Craig felt that he should have the same rights as females his age, so he filed suit asking that the law be declared unconstitutional under the Fourteenth Amendment's Equal Protection Clause. He contended that there was not sufficient reason for the legislature to make such a distinction based upon sex.

In defending itself, the state of Oklahoma argued that the distinction between the sexes was reasonable and was rationally related to the purpose of the law—reducing traffic accidents caused by drunken drivers. To support this claim, Oklahoma introduced statistics showing that drunken driving accidents could be effectively reduced by restricting the sale of 3.2% beer to a single group of drivers: males aged 18-20. The evidence included statistics demonstrating that many more males than females that age were arrested for "driving under the influence" and "drunkeness," that more males than females that age were injured in traffic accidents, and that more males than females that age were inclined to drink beer.

Though the rights of beer drinkers may seem like a trivial matter, the case raises the very fundamental question of whether laws can distinguish between the sexes, and, if so, what standards are there to help determine when such laws are constitutional and when they are not.

The Traditional Standard of Reasonableness

Many would argue that the Oklahoma law was clearly unconstitutional under the Fourteenth Amendment: aren't males and females of the same ages being treated differently under the law? The Supreme Court has long recognized, however, that classification is an inevitable part of law-making and that the Equal Protection Clause permits legislators to pass laws that reasonably classify people into different groups.

Thus, the state can require that non-residents pay higher

tuition than state residents to attend a state university; or they can treat juveniles and adults differently although each committed a similar crime; or they may tax some kinds of property at one rate, and others at another, and exempt others altogether.

The Court's reasoning is that the Constitution has granted states powers to provide for the health, safety, morals, and general welfare of the people. Since legislators are closer to these problems than the courts, and presumably speak on behalf of the people, courts should be reluctant to declare their actions unconstitutional. For example, it isn't enough to allege that the state's actions result in inequality. As the courts have explained, "inequality" is an unavoidable result of classification. In fact, under the traditional standard of reasonableness, as long as the classification is reasonable and "rationally related to the object of the legislation," it will be upheld. This traditional test gives the states wide discretion in enacting laws which treat some groups differently from others.

In the *Craig* case, two members of the Court—Chief Justice Burger and Justice Rehnquist—argued that the Oklahoma law should be upheld because it met the traditional equal protection test of reasonableness. In Chief Justice Burger's words, "the means employed by the Oklahoma legislature to achieve the objectives sought may not be agreeable to some judges, but since . . . the means are not irrational, I see no basis for striking down the statute as violative of the Constitution simply because we find it unwise, or possibly even a bit foolish."

Sex-Based Classifications:
The "Substantially Related" Standard

A majority of the Court did not agree with this reasoning. It wasn't that they found the law unreasonable. Rather, they applied another test which required that the law be more than reasonable if it were to be constitutional.

Writing for the majority, Justice Brennan pointed out that this case involved classification on the basis of sex, a distinction which had in the past resulted in numerous instances of discrimination. Relying on previous Court decisions in this area, he declared that sex-based classifications must be "substantially" related to the legislative goal.

What is the difference between "rationally related" and "substantially related"? In general, to be rationally related the classification must have a reasonable connection to the law's purpose (in this case, improving traffic safety). This standard places a substantial burden on the complaining party, who must show that the classification is irrational or arbitrary; and, as Chief Justice Burger suggests, the Court will under this standard often uphold unwise and imperfect laws. On the other hand, to be substantially related there has to be a close, intimate connection between the classification and what the law seeks to accomplish. This standard shifts the burden of proof to the law-making body, which must show that the classification is not only rational but also a necessary element in achieving an important legislative objective.

Applying this tougher standard to the Oklahoma law, the majority concluded that these statistics did not justify treating males and females differently in the purchase of 3.2% beer. The Court noted, for example, that while many more males than females aged 18-20 were arrested for alcohol-related driving offenses, only a very small percentage of either group—.18% of females and 2.0% of males—was involved in such offenses, a difference too small to justify a distinction based on sex.

Also, the statistics failed to show whether those arrested had been drinking 3.2% beer or other alcoholic beverages; for example, they might have been drinking hard liquor. Finally, while Oklahoma law prohibited 18-20 year-old males from buying beer, it did not prohibit them from drinking it, even when it had been purchased by their 18-20 year-old girlfriends. The unpersuasive statistics and inconsistencies in the law's application, the majority said, made the relationship between gender and traffic safety "far too tenuous" to satisfy the "substantially related" test. As a

45 U.S.L.W. 4057?!?

Are you unsure about the meaning of 45 U.S.L.W. 4057? You are not alone. Legal citations are unfamiliar to most Americans. However, they're easy to understand and will help you find cases cited in this issue and in other publications.

First, a look at Supreme Court citations. The most recent Supreme Court decisions appear weekly in a loose leaf volume called *United States Law Week*. A citation in this publication looks like the following:

Craig v. Boren, 45 U.S.L.W. 4057, December 20, 1976.

Broken down, the citation gives the following information:

(1) the name of the case, with the party appealing to the Supreme Court listed first, and the party against whom the appeal is being brought listed second:

Craig v. Boren

(2) the volume and page it can be found in *United States Law Week*:

45 (volume) U.S.L.W. 4057 (page)

(3) the date the case was decided:

December 20, 1976.

Supreme Court cases which are not so recent appear in a publication called the *United States Reports*. A citation for the case of *Kahn v. Shevin* 416 U.S. 351 (1974), for example, tells us the following:

(1) the name of the case, with the party appealing to the Supreme Court listed first, and the party against whom the appeal is being brought listed second:

Kahn v. Shevin

(2) the volume and page it can be found in *United States Reports:*

416 (volume) U.S. 351 (page)

(3) the year the case was decided: 1974.

Citations for decisions of other federal as well as state courts are similarly structured, the only difference being the reporter system in which the case appears.

Of course, a law school library is often the best place to research a case, but most bar associations, county or city governments, and law firms have at least the Supreme Court reporters. Establishing contacts with law librarians, practicing attorneys, and others who have ready access to such resources can thus be especially valuable for you and your students.

result, the Court found the Oklahoma law to be unconstitutional under the Equal Protection Clause.

"Suspect" Classifications:
The "Compelling Interest" Standard

Interestingly enough, the Court could have applied an even more stringent standard in the *Craig* case. In prior decisions, the Court has ruled that laws which single out certain special groups are "inherently suspect" if they are based on characteristics determined "solely by the accident of birth" or if they discriminate against groups of people who have been victims of "a history of purposeful unequal treatment," or who have been "relegated to a position of political powerlessness." The Court has stated, for example, that laws involving classifications based upon race, national origin, or alien status are all "suspect" and must be subjected to a "most rigid scrutiny" if they are to be upheld. In cases involving laws with these suspect classifications, the Court requires more than even a "substantial" relationship between the law and its purpose; instead, the state must show that it had a "compelling interest" in drafting the law the way it did.

Considering these guidelines, one might well question why sex is not one of the "suspect" classifications. It is, after all, an "accident of birth" and many would argue that women have been subjected to "a history of purposeful unequal treatment."

Are the courts promoting a form of equality never contemplated by the Fourteenth Amendment?

Craig v. Boren presented the Court with the opportunity to rule that sex should join the other personal traits listed above as a "suspect" classification but, as we have seen, the Court rejected this option, though it did employ a tougher standard than the traditional test of reasonableness.

Equality At All Costs?

Many questions remain unanswered by the *Craig* case. Isn't it possible that one outcome of decisions like this might be that legislators will try to avoid distinguishing between groups whenever possible and pass very restrictive laws which will meet any equal protection objections? What could be done, for example, if Oklahoma passed a law prohibiting *all* persons under 21 from purchasing 3.2% beer? Would not the law then treat everyone equaliy?

Many warn that court decisions such as *Craig* promote a form of equality never contemplated when the Fourteenth Amendment was enacted. Others are concerned that the courts in cases such as *Craig* are in effect substituting their judgment for the judgment of law-makers, thus upsetting the traditional separation of powers between the legislative and judicial branches. Thus, while Curtis Craig may have won the right of 18-20 year-old males to drink "non-intoxicating" beer, he raised at the same time troubling issues regarding fundamental guarantees of our constitutional system.

The Arlington Heights Case: Legislative Intent vs. Legislative Effect

Craig v. Boren is a case where a law on its face differentiated on the basis of sex. However, what about laws which don't mention sex—or race, national origin, or alien status—but whose effect may well be discriminatory? The Court faced this issue—whether it must examine the intent of legislators or the effect of their laws—in the case of *Village of Arlington Heights v. Metropolitan Housing Development Corporation* (45 U.S.L.W. 4073, January 11, 1977).

The case arose when the Metropolitan Housing Development Corporation (MHDC), a non-profit land developer, instituted plans to build 190 low and moderate income racially integrated townhouse units on a 15-acre parcel of property in Arlington Heights, a Chicago suburb located 26 miles northwest of the downtown area. Most of the land in the Village is occupied by single-family homes, and the racial composition of the community is almost entirely white (the 1970 census found only 27 blacks in the 64,000 member community). The development could not be built under the Village's existing zoning laws, however, so MHDC filed a petition for rezoning which would allow multiple family dwellings to be built.

The Village held three public meetings to consider whether or not the rezoning should be permitted. Each meeting drew large and vocal crowds, mostly composed of opponents of the rezoning plan. The opponents stressed two major arguments: 1) that the area had always been zoned for single family residences and current residents had purchased their homes in reliance on that fact, and 2) that this project was not consistent with a Village policy adopted nine years before which called for new multiple-family units to be built in areas where they would serve as a buffer between single-family homes and industrial complexes. Some of the opponents also argued directly against building racially integrated housing in the community.

After the third meeting, the Village Plan Commission passed a motion stating that "While the need for low and moderate income housing may exist in Arlington Heights and its environs, the Plan Commission would be derelict in recommending it at the proposed location."

One prospective resident, a black man named Ransom, was very disappointed in this decision. A worker at the Arlington Heights Honeywell factory, Ransom had to commute daily from 20 miles away in Evanston where he lived in a five-room house with his mother and son. Ransom had looked forward to the housing development since he hoped to move there and be closer to his job. With MHDC and two other prospective black residents, he sued the Village, claiming that the denial of the rezoning request was a violation of the Fourteenth Amendment's Equal Protection Clause.

The District Court ruled for the Village. After examining the actions of the Village, the court found that it did not intend to discriminate against any race, but rather acted to "protect property values and the integrity of the Village's zoning plan."

(continued on page 26)

FROM PREGNANCY BENEFITS TO UNDERCOVER AGENTS

Equal Protection and Pregnancy Benefits

General Electric's disability plan provided sickness and accident benefits to all its employees, but did not cover disabilities arising from pregnancy. In an action filed on behalf of all female employees who had been denied pregnancy benefits, Martha Gilbert brought suit asking that the District Court declare the plan in violation of Title VII of the Civil Rights Act of 1964, which prohibits an employer from discriminating on the basis of sex in compensating an employee. Both the District Court and Court of Appeals found the plan violated Title VII.

In *General Electric Company v. Gilbert* (45 U.S.L.W. 4031, December 7, 1976), the Supreme Court by a 6-3 vote held that disability plans which exclude pregnancy do not violate federal sex-discrimination law. In an opinion delivered by Justice Rehnquist, the majority stated that the General Electric plan was "nothing more than an insurance package, which covers some risks but excludes others." The majority found no evidence of specific intent to discriminate against women, nor did it agree that the plan had a discriminatory effect merely because it was less than all inclusive. Because there was no risk from which men were protected and women were not, and there was likewise no risk from which women were protected and men were not, the Court found that the plan was essentially neutral in what it did cover, and thus did not violate Title VII.

Justice Brennan filed a dissenting opinion in which Justice Marshall joined. He stated that the Court's analysis of the case was "simplistic and misleading," and felt that it was impossible to fairly examine the discrimination issue without looking at the prior history of General Electric's employment practices to see whether or not they treated the sexes differently. He found that the Court had disregarded General Electric's history of using practices which served to undercut the opportunities of women who became pregnant while employed, practices which led the District Court to conclude that General Electric's "discriminatory attitude" toward women was "a motivating factor in its policy." He also pointed out that the plan covered risks relating to the male reproductive system, such as vasectomies and circumcisions, as well as "voluntary" disabilities, such as sports injuries and cosmetic surgery. Given General Electric's history of employment practices and the fact that pregnancy was the only disability, sex-specific or otherwise, which was not covered by the plan, he concluded that the evidence supported a finding of intent to discriminate on the basis of sex in violation of Title VII.

Justice Stevens also dissented, arguing that "by definition" the exclusion of pregnancy discriminates on the basis of sex. He therefore found the policy in violation of Title VII without having to examine the questions of whether the policy had a discriminatory intent or effect.

Equal Protection: Preference in Hiring

Many people believe, especially in time of high unemployment, that their state government should give preference to state residents in hiring workers for government-sponsored jobs. A New York state law sought to do this by requiring private contractors on government jobs to give preference to citizens who had resided in the state for a year.

The law stated that contractors performing work for state and local governments in periods of high unemployment could not hire aliens or those who had resided in the state for less than a year until state residents were unavailable for employment. Two painting firms performing work for the New York City Board of Education were threatened with loss of their contracts when they employed legally admitted aliens. They then filed suit in federal court, claiming that this law violated their rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. In a 2-1 decision,

When unemployment is high, can the state give special hiring preference to its own citizens?

the District Court agreed. The majority stated that because the law's discrimination against aliens involved a "suspect" class, New York was required to prove that the law was necessary to serve a "compelling interest." The court concluded that the stated goal of protecting New York citizens during times of high unemployment did not meet this test and found the law to be unconstitutional.

Without hearing oral arguments or issuing a formal opinion, the Supreme Court upheld the District Court decision in the case of *Lefkowitz v. C. D. R. Enterprises, Ltd.* (45 U.S.L.W. 3462, January 10, 1977). Justices White and Rehnquist dissented, however, on the ground that the Court should have heard arguments on the case before reaching a decision.

Equal Protection and the Social Security Act

In *California v. Goldfarb* (45 U.S.L.W. 4237, March 2, 1977) the Supreme Court ruled that a provision of the Social Security Act which treated widows and widowers differently was in violation of the Fifth Amendment equal protection guarantee. Under this challenged provision, a widow received benefits automatically upon her husband's death, while a widower was only eligible for these benefits if he could prove that he was receiving "at least one-half of his support" from his deceased wife.

Writing an opinion in which three other justices joined, Justice Brennan found that the difference in treatment between the sexes was not based on any deliberate congressional finding that widows were in greater need of these benefits. Instead, he determined from examining the history of the passage of this Act that this sex-based distinction was merely a result of "archaic and overbroad" generalizations and "old notions" which presumed that all women are dependent. The opinion stated that the only conceivable justification for writing the presumption of female dependency into the law would be to save the Government the time, money, and effort which would be necessary if it required proof of dependency by both sexes. The opinion concluded that this administrative consideration was not sufficient to make the law constitutional under the Court's previously stated rule requiring that laws treating the sexes differently "serve important governmental objectives and . . . be substantially related to the achievement of those objectives." In a concurring opinion, Justice Stevens stated that "more than accident is necessary to justify the disparate treatment of persons who have as strong a claim to equal treatment as do similarly situated surviving spouses."

Justice Rehnquist dissented in an opinion in which Chief Justice Burger, Justice Blackmun, and Justice Stewart joined. He argued that it was constitutional to treat the sexes differently in this situation for two reasons: (1) the alleged discrimination in this case was clearly giving benefit to widows instead of harming them economically, and thus could be supported under the Equal Protection Clause as long as it was reasonable; (2) the great administrative inconvenience involved in determining dependency status in every case made it reasonable for Congress to rely on the presumption that females were generally dependent.

"Where did you get that chair?"

Right to Counsel and Lawyer-Client Confidentiality

Can an undercover agent be present at discussions between a defendant and his attorney without violating the Sixth Amendment's guarantee of the effective assistance of counsel? In the case of *Weatherford and Strom v. Bursey* (45 U.S.L.W. 4154, February 22, 1977), the Court found by a vote of 7-2 that the informer's presence at these discussions and his subsequent trial testimony did not constitute a violation of the Sixth Amendment.

The case arose when Brett Allen Bursey was arrested for destroying property during a draft protest action against a Selective Service office in Columbia, South Carolina. Under directions from his superior Pete Strom, Jack Weatherford, an undercover agent for the South Carolina State Law Enforcement Division, joined Bursey in damaging the draft board's property. Still serving as an undercover agent, Weatherford was also arrested and jailed. During the period before trial, Weatherford deliberately represented himself as another defendent in the case and was present at two meetings between Bursey and his lawyer. With Strom's approval, Weatherford then testified against Bursey at the trial where Bursey was convicted. Bursey then sued both Weatherford and Strom, claiming a violation of his constitutional rights.

In an opinion written by Justice White, a majority of the Supreme Court disagreed. The Court noted that Bursey and his lawyer had asked Weatherford to join him in their discussions of trial tactics, and that Bursey's defense in the case was not prejudiced by the informer's presence. The majority concluded that "there being no tainted evidence in this case, no communication of defense strategy to the prosecution and no purposeful intrusion by Weatherford," there was no violation of the Sixth Amendment. Justice White did imply, however, that Sixth Amendment rights might be violated in a situation where the defense could prove that the undercover agent advised his superiors of planned trial tactics or obtained information directly damaging to the

defendent's case during the discussions with lawyers.

Justice Marshall, joined by Justice Brennan, dissented, arguing that the Court's decision would threaten the safety of the lawyer-client relationship from government intrusion and would risk infringing upon the integrity of the entire criminal justice system.

Freedom of Speech: The Rights of Non-Union Teachers

In a case involving teachers in Madison, Wisconsin, the Supreme Court was faced with the issue of whether a nonunion teacher could be prohibited from speaking about a topic concerning the teachers' union at a public meeting of the Board of Education. The case, *City of Madison v. Wisconsin Employment Relations Commission* (45 U.S.L.W. 4043, December 8, 1976), involved a teacher who asked the Board of Education to postpone consideration of a union proposal requiring all teachers (whether union members or not) to pay union dues. Because this issue was a topic of pending negotiation between the union and the Board, the union brought a complaint before the Wisconsin Employment Relations Committee contending that the nonunion teacher had, by addressing this issue at the meeting, engaged in bargaining activities in violation of labor laws. The Committee upheld the union's contention and the Wisconsin Supreme Court approved their decision.

The Supreme Court reversed, stating that even assuming that such comments could ever be prohibited on the ground that they were a danger to union-management relations, this was surely not such a case. The Court asserted that the teacher's statements at a public meeting did not constitute any type of labor negotiations. Moreover, since the Board meeting was open to the public, the nonunion teacher was also addressing the Board as a concerned citizen, seeking to express his views on an important decision of his government. The Court concluded that "the participation in public discussion of public issues cannot be confined to one category of interested individuals. To permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees."

The Miranda Warnings and Custodial Interrogation

In a 6-3 ruling, the Supreme Court held that a suspect who is not under arrest but who voluntarily goes to a police station can be questioned without being given any "Miranda warnings." The Court's decision in *Oregon v. Mathiason* (45 U.S.L.W. 3505, January 25, 1977), appears to narrow the rule announced in the 1966 *Miranda* case that statements made by a defendant while under "custodial interrogation" could not be used against him at trial unless he had first been warned that: 1) he had the right to remain silent, 2) whatever he said could be used against him, 3) he had a right to a lawyer, and 4) a lawyer would be appointed if he could not afford one.

In this case, Carl Ray Mathiason, who was on parole, went to the police station voluntarily after a police investigator left a card at his home inviting him to the station to talk about a recent burglary. Mathiason was questioned at the station behind closed doors. After the investigator falsely told Mathiason that his fingerprints had been found at the scene of the crime, Mathiason confessed to the burglary. He was then allowed to return home, but was later arrested and charged with the crime.

In a 6 to 3 decision, the Court seemed to cut back on its ruling in the 1966 Miranda case

In an unsigned opinion issued without hearing any oral argument on the issues presented, the Court stated that an individual was under "custodial interrogation" only after being taken into custody or "otherwise deprived of his freedom of action in any significant way." Since Mathiason had voluntarily submitted to questioning, the Court concluded his constitutional rights under the Fifth Amendment were not violated by his failure to receive the Miranda warnings.

Justices Marshall, Brennan, and Stevens dissented. Justice Marshall stated that since Mathiason was questioned in private at a police station, told he was a suspect, and lied to about the fingerprints, he could reasonably believe that he was not free to leave. He concluded that the majority's decision was at least contrary to the "rationale" of the *Miranda* case, if not contrary to its exact holding. Justices Brennan and Stevens also dissented, mainly on grounds that the case should not have been decided without full oral argument by attorneys on both sides.

Search and Seizure: IRS and Back-Taxes

In *G.M. Leasing Corporation v. United States* (45 U.S.L.W. 4098, January 12, 1977), a unanimous Supreme Court ruled that the Fourth Amendment protection against unreasonable searches and seizures prohibited Internal Revenue Service officials from seizing private property in payment of past-due tax debts without first obtaining a search warrant. The case involved a taxpayer, George Norman, who owed more than $400,000 in back taxes. Under a federal law allowing the IRS to seize property in cases of a taxpayer's failure to pay the debt, IRS agents got a locksmith to help them enter Mr. Norman's office at the car leasing firm where he was employed as general manager. The agents also seized automobiles registered in the name of Mr. Norman's company which were located on public streets and parking lots. The company, controlled by Mr. Norman, sued the IRS claiming a violation of its Fourth Amendment rights.

The Supreme Court agreed with this contention. In an opinion written by Justice Blackmun, the Court noted that one of the principal purposes of the Fourth Amendment was to prevent "the massive intrusion on privacy undertaken in the collection of taxes." Although the Court found that the IRS agents had the legal right to seize autos left in public lots and other public areas, the Court held that it was unconstitutional for the agents to enter a private office to seize property without a warrant. In Justice Blackmun's words, "[i]t is one thing to seize without a warrant property resting in an open area . . . , and it is quite another thing to effect a warrantless seizure of property . . . situated on private premises to which access is not otherwise available to the seizing officer."

—CAK

NEWSCLIPS

Presidential Priorities

A recent *Associated Press* dispatch lists those presidential duties which a group of first grade children in Oregon think are most important. The children believe the President should: "help ducks; sign papers; tell people where to go; give poor people money; give people clothes; keep people from stealing; feed birds; help a lost puppy; help us not die; help plants to live; keep bees safe; help boaters not crash into rocks." Considering the President's concerted attempts to be responsive to the concerns of the people, one wonders whether the anticipated governmental re-organization should include a merger of the Audobon Society, Sierra Club and SPCA into a cabinet-level department.

Report Explores School Violence

The Senate Subcommittee to Investigate Juvenile Delinquency has released its final report on school violence and vandalism entitled, "Challenge for the Third Century: Education in a Safe Environment." The 102-page report emphasizes that "approaches that advocate the quick cure and the easy remedy will often fail because they ignore the complex and diverse causes of these problems. Meaningful progress in this area can only be achieved by engaging in sober assessment, not hysterical reaction, and instituting thoughtful measures rather than glib promises." Law-related education, notes the report, deserves particular attention for its efforts in acquainting students "with the positive role the law plays in our society and the benefits of using its principles to settle disputes."

According to a National Education Association study submitted to the Senate Subcommittee, the number of assaults occurring in schools increased 58% in the years from 1970-74. During that same period, sex offenses increased by 62%, drug related crimes went up by 81% and robberies escalated by 117%.

Indiana's Senator Birch Bayh, Chairman of the Subcommittee, said, "it has been estimated that on a national scale we are currently spending almost $600,000,000 each year as a result of vandalism in our schools ... even more shocking, however, is the 70,000 serious physical assaults on teachers and literally hundreds of thousands of assaults on students perpetuated in our schools annually." Bayh emphasized that the Subcommittee found the upsurge in school violence not confined to inner city schools or to schools in low-income areas, but a growing problem in schools of affluent suburbs and rural areas as well.

The report discusses the extent of the problem, its underlying causes and strategies for improvement. It also offers recommendations and a bibliography of suggested readings. Copies are available for $1.25 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

"Youth" Vote a Dismal 38%

In last fall's general election, newly enfranchised voters, the 18-20 year olds, were once again the least likely group of eligible voters to cast their ballots. According to the Census Bureau, only 38% of eligible voters in this age group went to the polls last November 2. This percentage was a full 10% below their 1972 turnout, when the 18-20 year-old age group also held the same dubious distinction.

Overall, 60% of the 146.5 million voting-age Americans went to the polls, down four percentage points from 1972 and ten percentage points lower than 1964, when the bureau first measured voter participation.

Student Social Attitudes Up, Political Knowledge Down

In the National Assessment of Educational Progress survey on education for citizenship, students scored very well in the area of social attitudes and quite poorly in the area of political knowledge. In response to questions whether sex, race, political beliefs or religion should be determining factors for getting a job, nearly all students agree that one's abilities and skills should be of primary importance. Nine out of ten support equal housing opportunities and an overwhelming number—over 95%—believe a person should be able to vote whether rich, poor, male or female. In contrast, the tests show that only slightly more than half the seventeen year-olds know that each state has two U.S. Senators and that the number of U.S. Representatives from each state depends on that state's population. In addition, 35% think the President can appoint people to Congress.

Questions which the students handled best concerned criminal rights: 98% knew an accused has a right to a lawyer and to be informed of the charges against him or her, 91% knew of their right to remain silent under police questionning. While it would be encouraging if law-related education were identified as the major reason for such knowledge, it is far more likely that TV police shows account for the high student marks on these questions.

The survey was administered nationally by the Education Commission of the States to 5,000 thirteen and seventeen year-olds during the 1976 spring school semester. *Education for Citizenship*, the report of the survey, is available from the National Assessment of Educational Progress, The Education Commission of the States, Suite 700, 1860 Lincoln Street, Denver, Colorado 80295.

Interested in Freedom of the Press?

A free report on high school and college cases affecting student journalists and journalism teachers is available from the Student Press Law Center, 1750 Pennsylvania Avenue, N.W., Room 1112, Washington, D.C. 20006. A manual which outlines the First Amendment rights of high school journalists and suggests a set of model guidelines to govern student publications costs $1.00. The Center also provides legal assistance and advice to students and journalism teachers, and their attorneys. —NG

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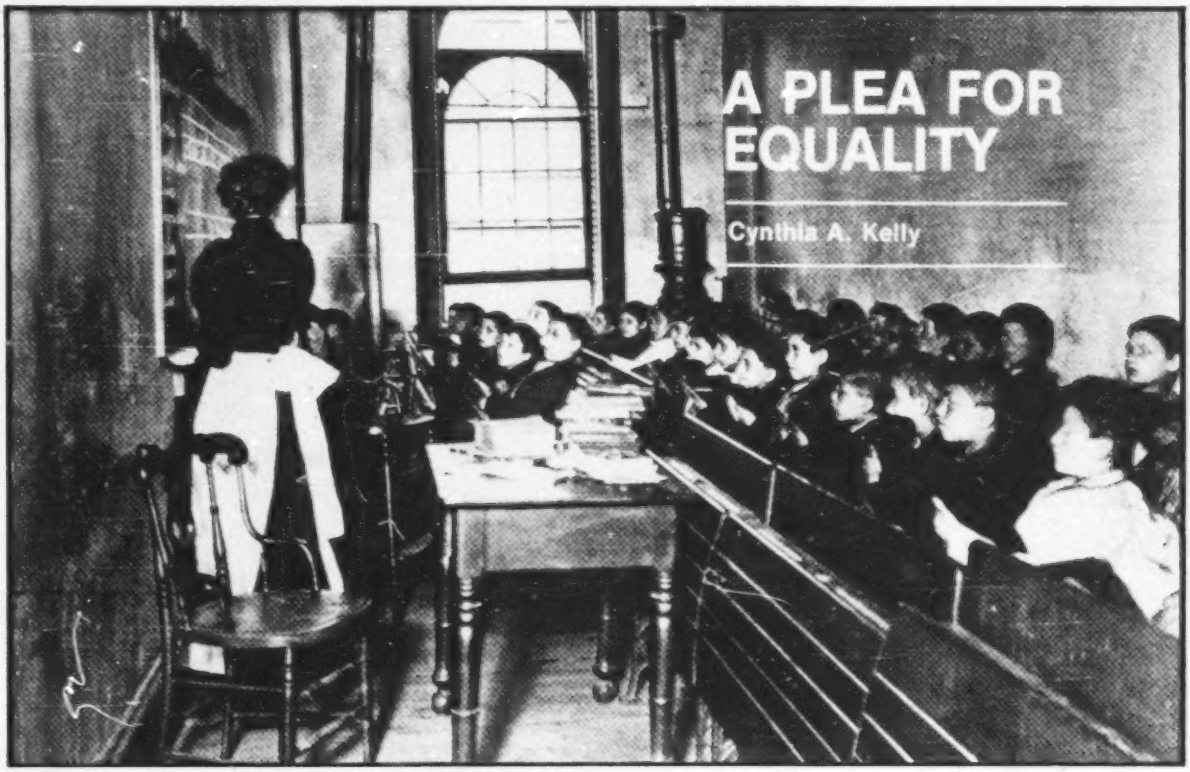

A PLEA FOR EQUALITY

Cynthia A. Kelly

Like most first graders, Sarah Roberts was eager to start school. She felt lucky that there was an elementary school so close to her home. It would only take her a few minutes to walk there.

Unfortunately for Sarah, the School Committee decided that she was not to attend this school. Instead, she was assigned to a school almost half a mile away. The reason? Sarah was black and the school nearest her home was for white children only.

Sarah's father wanted his daughter to attend a neighborhood school. He therefore sued the city, arguing that his daughter had been unlawfully denied her right under state law to attend public school. In Sarah's case, however, the lawyers didn't talk about busing, although the incident did take place in Boston. And none of them mentioned *Brown v. Board of Education*, the landmark 1954 school desegregation case. As a matter of fact, not one lawyer even referred to the Equal Protection Clause of the Fourteenth Amendment!

Surprising? Not at all. Sarah's case was decided in 1849, 19 years before the Fourteenth Amendment was added to the Constitution and over 100 years before the *Brown* decision outlawing racially segregated schools.

Even though Sarah did not have the benefit of the Equal Protection Clause, she did have something almost as good: the services of Senator Charles Sumner as her lawyer. Sumner was active in the abolitionist movement, and felt that slavery as well as all other forms of racial discrimination should be abolished. He agreed with the American Anti-slavery Society that slavery was immoral because it deprived men of their natural and inalienable right to liberty and equality under the law. He maintained that it was the duty of every government to provide laws to protect men in these natural rights. For Sumner, Sarah's case presented the opportunity to translate these philosophical beliefs, stated so forcefully in such documents as the Magna Charta and the Declaration of Independence, into a legal theory.

Sumner Presents His Arguments

Sumner began by examining the Massachusetts constitution to find a general statement from which he could build his case that racially segregated schools were unlawful. He seized upon a passage stating that "all men are born free and equal," and argued that this phrase affirmed the American political tradition that every man, without distinction of color or race, is equal before the law. "He may be poor, weak, humble, or black . . . but before the Constitution of Massachusetts all these distinctions disappear," Sumner argued. ". . . He is a *Man*, the equal of all his fellow-men. He is one of the children of the State, which . . . regards all its offspring with an equal care."

To support his theory, Sumner traced the origins of the democratic concept of equality from Herodotus, Seneca, and Milton, and then described its evolution through the

French Revolution. He reasoned that this principle of equality was the real meaning of the constitutional provision, and argued that its language prohibited distinctions drawn on the basis of race. Quoting Rousseau, Sumner asserted, " 'It is precisely because the force of things tends always to destroy equality, that the force of legislation ought always to maintain it.' In a similar spirit, the courts should tend to maintain it."

After articulating this theory of "equality before the law," Sumner outlined its application to public schools in language that the United States Supreme Court would echo over 100 years later in *Brown v. Board of Education*. He maintained that the racial segregation of black children was a violation of equality for two reasons: (1) it inconvenienced black children by making them travel further than white children to attend school, and (2) it established a "caste system" which made blacks feel degraded and made whites feel uncharitable and prejudiced. "The words Caste and Equality are contradictory," Sumner maintained. "They mutually exclude each other. Where Caste is, there cannot be Equality; where Equality is, there cannot be Caste. . ."

He didn't have sociological data relied on by the Court to support its *Brown* decision, but he made essentially the same argument, contending that racially separate schools could never be equal. He reasoned that even if they had similar resources and equally competent teachers, schools limited to one racial group had a different spirit from schools where all members of the community met together in equality. "It is a mockery to call [them] equivalent," he emphasized.

Sumner also asked the court to consider the consequences of acknowledging that school committees could create separate schools for whites and blacks. Why would they stop there? "They may establish a separate school for Irish or Germans . . . .They may establish a separate school for the rich, that the delicate taste of this favored class may not be offended by the humble garments of the poor . . . . All this, and much more, can be done in the exercise of that high-handed power which makes a discrimination on account of race or color."

He concluded by asserting that the school committee's policy of creating racially segregated schools was contrary to the Constitution and laws of Massachusetts. Addressing the judges directly, he said, "Already you have banished Slavery from this Commonwealth. I call upon you now to obliterate the last of its footprints, and to banish the last of the hateful spirits in its train . . . . "

The Court Rules Otherwise. . .

The Massachusetts court agreed with Sumner's agruments that under Massachusetts law, "all persons without distinction of age or sex, birth or color, origin and conditon, are equal before the law." But, Chief Justice Lemuel Shaw explained, "when this great principle comes to be applied," it does not mean that every person enjoys the same civil and political rights. What those rights are, he said, depends upon how the law deals with particular individuals in a variety of circumstances.

In this case, the court implied that Sarah might have a valid claim if she were excluded entirely from the public school system, but in fact she had not been denied this opportunity. Offering an argument that would become the law of the land fifty years later as a result of the Supreme Court's decision in the case of *Plessy v. Ferguson*, the court said that schools for "colored" students were equal to white schools and as well suited to advance students' education. Since Sarah had access to an acceptable school for children of her own race, she could not claim that she was "unlawfully excluded from public school instruction."

The court then turned to Sumner's argument that racially separate schools created a discriminatory caste system. In the court's opinion, it hadn't been shown that racially separate schools created discrimination. As Chief Justice Shaw put it, "this prejudice, if it exists, is not created by law, and probably cannot be changed by law."

Already you have banished slavery . . . I call upon you now to obliterate the last of its footprints . . .

Finally, the court found that the increased distance which Sarah was required to travel to attend school did not make the regulation unreasonable, still less illegal. It noted that in towns covering a large territory, laws requiring pupils to travel long distances might be overturned by the courts. "But in Boston," the court stated, "where more than 100,000 inhabitants live within a space so small that it would be scarcely an inconvenience to require a boy of good health to traverse daily the whole extent of it," a system of classification "may be useful and beneficial."

But the Legislature Agrees

Six years later, however, the Massachusetts legislature enacted Sumner's arguments into a law which provided that blacks be admitted without separation into all public schools. Sumner's theory of equality before the law was also distributed as a pamphlet by the abolitionists. This legal theory became the center of the campaign against slavery, and the theme that dominated the great slavery debates of 1854-1861. More significantly for us today, the concept that a constitutional democracy could not deny basic human rights on such an arbitrary basis as race was translated into the Fourteenth Amendment's provision that no state shall "deny to any person . . . the equal protection of the laws."

In effect, Sarah Roberts' desire to attend school in her own neighborhood provided the spark for what has been described as a "constitutionalization" of the general ideas of natural law. Before this case, people thought of rights as noble and philosophical concepts, not necessarily as realities in everyday life. "Equality," for example, was a general, abstract, hypothetical term, fine for Fourth of July speeches but unenforceable in law. After this case, however, natural rights began to become, in the words of a modern commentator, "specific, concrete, and enforceable." It was a shift from rhetoric to reality, "from moral rights to rights defined judicially."

By Will Bernard

CASES ON . . . ANIMALS AND ACCIDENTS

NOBODY'S FAULT

Harvey saw two Airedales fighting on the sidewalk. Snatching up a stick, he raised it over his head to drive them apart. But as he did so, the stick struck another helpful citizen who had come up behind him.

As a result, Harvey wound up in court facing a damage claim. The other man reasoned as follows:

"I don't blame Harvey for trying to break up the dog fight. But the fact is, he did put a gash in my scalp that took seven stitches to close. Since this was certainly not my fault, I am entitled to be compensated for my injury."

But the court turned him down, since it wasn't Harvey's fault either. The court said the incident fell in the category of "inevitable accident," for which the law imposes no liability on anybody.[1]

Most courts will apply this principle in a wide variety of situations. Another case involved a motorist who was sued for knocking down a four-year-old boy. The youngster had dashed out suddenly from behind a parked car.

Admittedly, the child was too young to be blamed for the accident. But the court saw no reason to make the equally blameless motorist foot the bill.[2]

Of course, the mere fact that an accident happens suddenly does not mean it was "inevitable." Thus:

A motorist caused a collision when he fell asleep at the wheel. Defending himself later in court, he said:

"One moment I was awake, the next moment I was asleep."

But the court found him negligent for not paying more attention to the telltale symptoms of drowsiness.

"Sleep," said the court, "does not ordinarily come upon one unawares."[3]

1. *Brown* v. *Kendall*, 60 Mass. 292 (1850)
2. *Geren* v. *Lowthian*, 152 Cal. App. 2d 230 (1957)
3. *Bushnell* v. *Bushnell*, 103 Conn. 583 (1925)

ANIMAL TESTIMONY

Part of the case against Harris, on trial for manslaughter, was the fact that two bloodhounds had followed a trail to his house. But Harris raised an objection to this kind of evidence.

"According to the Constitution," he said, "an accused person has the right to cross-examine his accusers. Obviously I cannot cross-examine a couple of dogs. Therefore, I am not getting my constitutional rights."

However, the court pointed out that Harris did have a right to cross-examine the dogs' trainer. Overruling the objection, the court said this was as good as cross-examining the operator of a drunkometer or a radar speedometer.[1]

Most courts are willing to accept, under proper safeguards, information gleaned from animals. Nor does this apply only to bloodhounds.

Consider the case of a disputed cow, allegedly stolen from Farmer Griggs. Griggs had the animal brought to his barnyard. There, according to witnesses, she showed familiarity with both the barn and the watering mechanism.

In court, the judge found this evidence persuasive.

"It is characteristic of practically all domestic animals," he said, "to show familiarity with the places where they have been sheltered and fed."[2]

Still, animal "testimony" is usually not strong enough by itself to send a person to jail.

In a burglary case a bloodhound had led detectives to the defendant's shack. But there was no other evidence to connect him with the crime.

"Alone and unsupported," said the court, dismissing the charge, "such evidence is insufficient; there must be other testimony to convict."[3]

1. *State* v. *Davis*, 154 La. 295 (1923)
2. *State* v. *McAteer*, 227 Iowa 320 (1939)
3. *Carter* v. *State*, 106 Miss. 507 (1914)

STRAY BULLET

Irked by a neighbor's barking dog, Phil took a pot shot at it with his pistol. The bullet missed the dog, passed through a hedge, and injured a boy on the sidewalk.

Was Phil legally liable to the victim? In a court hearing, he denied responsibility.

"The boy was completely hidden by that hedge," he said. "Obviously I had no intention of hurting him, since I was not even aware he was there."[1]

But the court held Phil liable anyhow, pointing out that he had no right to fire at the dog in the first place. As for the "no intention" argument, the court ruled that—as one judge put it—"the intention follows the bullet."[2]

The case illustrates how sternly the law looks upon the handling of firearms. Due care is demanded, and "due" is measured by the extraordinary risks that guns involve.

In another case the trigger was pulled by accident. An off-duty watchman was twirling his gun on his forefinger when it discharged. He had forgotten it was loaded.

A companion was wounded in the leg, and later filed suit for damages. Here too the court found liability, declaring that absentmindedness was no excuse.

"Guns thought to be unloaded," said the court, "are the most dangerous. The tragic story of death and injury . . . is all too familiar in this country."[1]

Still, the law recognizes that pure accidents can and do occur. For example:

A hunter fired at a wild turkey. The bullet hit a tree and ricocheted into another hunter who was hiding in the bushes. But a court said the first hunter, having fired his gun lawfully, could not be blamed for what happened.

He would have needed "necromancy," said the court, to foresee such an outcome.[4]

1. *Corn* v. *Sheppard*, 179 Minn. 490 (1930)
2. *State* v. *Batson*, 339 Mo. 298 (1936)
3. *Rives* v. *Bolling*, 180 Va. 124 (1942)
4. *Seabolt* v. *Cheesborough*, 127 Ga. App. 254 (1972)

WAYWARD CANARY

Myrtle's pet canary escaped from its cage one morning and fluttered into a neighbor's back yard. The neighbor captured the bird but refused to give it back. Finally Myrtle filed suit.

When the case came to trial, the neighbor argued as follows:

"The canary may have been her property while it was in the cage. But once it escaped into the open air, it was 'fair game'. So now it's mine."

However, the court ruled in favor of Myrtle, primarily on the ground that the canary had been domesticated. It was no more "fair game," said the court, than an organ grinder's monkey would be if it slipped out of its collar.[1]

Generally speaking, an animal that is wild by nature belongs to no one. But once captured and domesticated, it may become as much private property as an automobile or a suit of clothes. From then on, even if it escapes, most courts will continue to recognize the original owner's rights.

A more extreme case involved a rare species of parrot. This time, the bird escaped and remained at large for almost three weeks. When finally captured, it had made its way to the next county.

But again, when the owner proved that the bird had been trained, the court upheld his property rights in the parrot and ordered it returned.[2]

On the other hand, consider the saga of a sea lion which escaped from a holding tank into the Atlantic Ocean and was later recaptured by a fisherman.

Here, the creature had not been domesticated in any way. The court thereupon decided in favor of the fisherman, pointing out that the sea lion had "regained its natural liberty."

"There was no intention on its part," said the court, "of returning to its place of captivity, or of again submitting itself to the domination of the (original owner)."[3]

1. *Manning* v. *Mitcherson*, 69 Ga. 447 (1882)
2. *Conti* v. *ASPCA*, 353 N.Y.S. 288 (1974)
3. *Mullet* v. *Bradley*, 53 N.Y.S. 781 (1898)

"Can't you just ask whether I'd like white or whole wheat?"

OREGON PROJECT THRIVES ON HARD MONEY

Most education innovations these days are supported by "soft" money: special grants from private foundations, the state or federal government, or other sources outside of local school systems. It's called soft money for a good reason —eventually the grants will run out, the money will go away, and the program will have to sink or swim with the money it can get from local school districts.

Oregon's Tri-County Law-Related Project has gone a different route. The key to the project's funding is that it doesn't rely on outside sources, but rather on contributions from school districts in the Tri-County area. The result is a project fully supported by participating districts themselves, through a sum equal to $ .23 per student contributed by each district.

Can you get something significant started without outside money? In just four years time, law-related education has grown in the Tri-County area from a few fragmentary efforts to a major component of K-12 education. Many school districts in the Tri-County area are involved in various stages of introducing law-related education to their staffs and students, and in the Portland Public School system, the largest system in the area, law-related education will soon be implemented in all elementary and secondary schools. In Portland, full-scale implementation will naturally raise the cost per student, but the central factor remains the same: the program is being supported by hard money contributed by the local school system itself.

Lawyers a Key

How did the project get this kind of support from school systems? There were many factors, but none was more important than the strong cooperation they received from the legal community. Lawyers were particularly crucial in building support for the project within the school system and in the general community. One key has been that two lawyers who are vitally interested in law-related education—Jonathan Newman and Robert Ridgely—serve both on the project's Steering Committee and on the Portland School Board. They and other lawyers committed to the program have fostered the involvement of school and civic leaders in law-related education, with the result that school systems in the area have seen the need for these programs and have been willing to commit their own funds to law-related education.

Though there was some lawyer-educator cooperation back in the 60's, and even some curriculum development, the current push began in 1973 with some awareness workshops offered by the Multnomah County Intermediate Education District. An ABA Regional Conference on Law-Related Education, and a leadership meeting sponsored by the Law in a Free Society project, served as catalysts to bring together some key people from the state board of education, the Oregon State Bar, and other groups. They eventually formed a statewide committee, and decided to make the Tri-County area a pilot for law-related education in the state.

Lawyers and educators have worked together on everything. The Steering Committee which runs the program is divided 50/50 between lawyers and educators. This group makes policy for all project activities.

Getting Started

Can one individual begin the process of cooperation? According to Lynda Falkenstein, the coordinator of the Tri-County project, one person can do a lot. The key, she says, is identifying and gathering together people who care about the subject matter. Educators and lawyers are essential, but additional key people will be different in each community. In some communities, they may be parents, business people, and state department of education specialists; in others, law enforcement officers and university professors.

Ms. Falkenstein advises that lawyers may be your entree to many people and organizations who can provide assistance. For example, they are often past or present members of school boards, serve as university trustees, and have links to the business and political communities. And remember that judges can be particularly important, since they are well known and respected in the community.

Ms. Falkenstein offers one last bit of advice: if law-related education is truly a joint venture among lawyers and educators, it must be a two-way street, with each group helping the other. While it is easy to see how lawyers can contribute, educators shouldn't forget that they have many skills that they can share with lawyers. Educators can help lawyers by sharing a wide variety of instructional tools; by their knowledge of the capabilities of students at various levels, by their experience with the curriculum, including the many subjects that can be enriched with law studies, and by their general familiarity with the whole educational process. That's why the Oregon project will make it a practice to hold orientation meetings for the lawyers who will be involved in its program, working particularly hard on problems of tone and methodology, so that lawyer-volunteers are relaxed in the educational setting and able to relate effectively to students and teachers.

For further information, contact Lynda Falkenstein, Project Co-ordinator, Tri-County Law-Related Education Project, P. O. Box 166657, Portland, Oregon 97237, 503/255-1841. —CJW

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By Joanna Banthin, Susan E. Davison

FOCUS ON AUDIO-VISUAL MATERIALS

ELEMENTARY

■ ***Citizenship Adventures of the Lollipop Dragon.*** Series of color sound filmstrips, 8-13 minutes each. Society for Visual Education (1976). Grades K-6. Six stories from the Kingdom of Tum Tum which emphasize law-related concepts. Many segments have "stops" to encourage discussion and conclude with open-ended questions for young viewers. In *Freedom of Choice: Make Mine Purple* prince Hubert discovers that individuals have their own preferences and don't want him to determine the color of their homes. In *Choosing a Leader: Charley the Great?* the children of Tum Tum decide to select a club president and learn some things about authority, fairness, and prudent methods of choosing leaders. In *Rules Are Important: A Mixed-Up Mess* Prince Hubert thinks he'd like to do without rules for a while--until he participates in a chaotic pie eating contest. In *The Majority Rules: A Secret that Grew* the people of Tum Tum find a way to solve disagreements about how to surprise the Queen on her birthday. In *Changing Rules: It's Different Now* Princess Gwendolyn helps the roadbuilder and learns many things about rules, including how they originate and how to change them when necessary. In *Civic Responsibility: Living Dreams* the Lollipop Dragon and the people of Tum Tum help the King and Queen make the Kingdom a better place.

■ ***Crime: Everybody's Problem.*** Let's Find Out Series. Color sound filmstrip, 7 minutes. Teacher's guide provided. Pathescope Educational Films (1975). Grades 3-6. This film uses words and images that children will easily understand to explain what crime is and how it affects people. The opening scene shows a "bully" stealing a bike, and the narrator explains that he is a "criminal." Kit includes masters for student worksheets.

■ ***First Things: Social Reasoning Series.*** Color sound filmstrips, 6-10 minutes. Teachers' Guides provided. Guidance Associates (1974). Grades K-4. Each of the four student kits contains two open-ended filmstrip stories which encourage critical thinking. In *How Do You Know What Others Will Do?* children analyze the actions of others in two situations. The stories in *How Would You Feel?* ask children to put themselves in the place of others and understand different points of view. In *How Can You Work Things Out?* children must deal with actions that affect other people's feelings. The stories in *How Do You Know What's Fair?* encourage students to analyze what fairness means in everyday life. A special filmstrip for teachers—*A Strategy for Teaching Social Reasoning*—provides theoretical background on developing social reasoning skills, as well as some strategies for teachers to use in organizing discussions and activities. Teaching guides for all segments offer concrete suggestions for teachers.

■ ***The Hideout.*** 16mm color film, 15 minutes. Churchill Films (1976). Grades K-4. A sensitive film in which two children, helped by a third younger boy, build a secret fort. The youngest one contributes some boards he has taken without permission. The older children quarrel over whether to give them back (the boards have been slightly damaged) and suddenly the fort doesn't seem like so much fun. A painful lie is told and many issues relating to responsibility and moral judgement are raised.

■ ***Law: The Rules of the Game are Changing.*** Color sound filmstrips, 9-12 minutes. Doubleday Multimedia (1974). Grades 4-9. Five filmstrips which can give students an understanding of law and the concepts underlying our legal system. *What Are Laws?* provides an overview of the origins and functions of rules, laws, and social organization. *What Is a Good Law?* explains how reasonable laws and rules are evolved, and discusses some criteria for "good" laws. In *Who Makes the Laws?* the nature of legislative and judicial lawmaking is discussed. *How Laws Are Interpreted and Enforced* deals with the separation between the duties of law enforcement officers and the responsibility of the courts. *The Court Is Now in Session* presents a mock trial involving a juvenile accused of theft, and covers arrest, legal aid, jury selection, trial procedure and other aspects of the criminal justice system.

■ ***The Police and the Community.*** Let's Find Out Series. Color sound filmstrip, 6 minutes. Teachers' guide provided. Pathescope Educational Films (1975). Grades 3-6. This filmstrip emphasizes the importance of police-community cooperation in public safety. It shows the various duties police perform and explains the meaning of "arrest," "witness," "trial," and "jury." It explains how citizens can help police by keeping their eyes open and reporting any trouble they see. Kit includes spirit masters and student work sheets.

■ ***Soopergoop.*** 16mm color film, 13 minutes. Churchill Films (1976). Grades K-3. Rodney, an animated cat on t.v. commercials, shows kids how he can make them want to buy things, in this case a very sugary cereal called "Soopergoop." A good discussion starter for lessons on advertising and consumer law.

■ ***The Super Duper Rumors: Lessons in Values.*** Color sound filmstrips, 5 minutes each. Salenger Educational Media (1974). Grades K-2. Two sound filmstrips, with picture cards for each, provide children with enjoyable stories through which they can explore how rumors develop. In *The Substitute Teacher* a class imagines what their new teacher will look like and starts rumors describing a frightful person. Finally they meet him, and are quite delighted that he is not as the rumors described. In *The Aminal* a rumor about "the green 'aminal' Patrick caught" causes some children to envision a monster. They are quite surprised to discover that the "aminal" is a friendly turtle. Useful in helping young children understand the importance of "getting the facts." Also suitable for preschoolers.

■ ***Why We Take Care of Property: The Planet of the Ticklebops.*** Basic Concept Series. 16mm color film, 16 minutes. Learning Corporation of America (1976). Grades K-3. The people of the planet Nice always took good care of their property. One day two children decide to start breaking things. This eventually causes life to deteriorate seriously. The film ends optimistically as everyone works together to rebuild their society. Also available in Spanish.

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- ***Capital Punishment.*** The Bill of Rights in Action Series. 16mm color film, 23 minutes. BFA Educational Media (1975). Grades 9-12. An open-ended film in which a man, hired to kill a young woman, sets off a bomb in a football stadium. He is convicted and sentenced to death. He argues that this sentence is unconstitutional under the 8th Amendment, while the state argues that deterrence and retribution make capital punishment necessary. The film poses many critical questions about the constitutionality and effectiveness of the death penalty.
- ***Constitutional Crises and Confrontations.*** Five color sound filmstrips, about 30 minutes each. Teacher's guide and student work sheets provided. Teaching Resources Films (1974). Grades 9-12, teacher. Series explores periods of institutional and political crisis in U.S. history, emphasizing the basic strengths of American institutions and the Constitution. Makes events and thoughts of earlier eras contemporary, and shows how constitutional issues are real, not abstract. *Crises of the Courts* presents the trial of Aaron Burr for treason, Franklin Delano Roosevelt's attempt to "pack" the Supreme Court, and Richard Nixon's attempt to keep the Watergate tapes under his personal control. Notes the power of public opinion. *Crises of the Presidency* focuses attention on the efforts of three presidents to expand the powers of the office: Jackson's battle with Congress over the national bank, Truman's dismissal of MacArthur, and Nixon's apparent use of public funds and campaign contributions for personal purposes and his attempts to limit investigations of his administration. *Crises of Civil Liberties* shows how laws affecting individual rights have been tested by the Alien and Sedition Acts, the case of Sacco and Vanzetti, the actions of Sen. Joseph McCarthy, and the Pentagon Papers affair. Emphasizes the strength of law, but shows how legal institutions are vulnerable to public opinion. *Crises of National Unity* presents the Dred Scott case, the impeachment of Andrew Jackson, and the domestic impact of the war in Indochina. Describes the divisions these issues created along lines of race, partisan affiliation, age, and economic status. *The End of the Story: The Fall of the Nixon Administration* traces the events that led to Nixon's resignation. Also brings together concepts developed in the filmstrips.
- ***Constitutional Law in Action.*** Four color sound filmstrips, 10-12 minutes each. Teacher's guide provided. Teaching Resources Films (1975). Grades 9-12. Four separate strips that involve students in legal decision-making concerning issues which have been decided by the Supreme Court. *Search and Seizure* presents an incident in which a young man is stopped for careless driving, searched, and found to have marijuana in his cigarette box. Students are exposed to the arguments in the case and opposing majority and minority opinions of the Supreme Court are presented. *Due Process* shows how the Due Process Clause of the Fourteenth Amendment and the Freedom of Speech Clause of the First Amendment are applied to a case in which a young man has an American flag sewn to the seat of his pants. Presents Supreme Court decision on a similar case and illustrates the form of legal argument. *Right to Counsel* explores the dimensions of the decision that an indigent sentenced to "only ninety days" was denied his right to counsel. Asks students to consider such issues as the seriousness of the crime, length of sentence, and character of the defendent. Presents the Supreme Court decision. *State Action* focuses attention on the State Action Clause and the Equal Protection Clause of the Fourteenth Amendment. The issue concerns a city granting a segregated club permission to use a public recreation facility.
- ***The Emerging Woman.*** 16mm color film, 40 minutes. Film Images, Inc. (1974). Grades 7-12. A 1975 American Film Festival award winner. Using newsreels, photos and other original sources, it documents the discrimination black and white women have been subjected to throughout history, especially in America. Describes the background of women's rights movements, including early labor efforts, the abolitionists the women's rights convention at Seneca Falls, the suffragettes, and efforts for birth control, and raises many contemporary issues as well.
- ***In Search of Justice.*** Law in American Society Foundation. Charles E. Merrill Publishing Company (1975). Kit. Grades 7-12. This inquiry-oriented program uses case studies in eight color sound filmstrips to explore the legal system and some basic concepts of law. *Law: A Need for Rules?* deals with police power and the balance between individual rights and the need to protect society. *Youth: Too Young for Justice?* shows the difference between adult and juvenile criminal procedures. *Free Expression: A Right to Disagree?* raises questions about the nature of "speech" and the scope and limits of the right to free speech. *Discrimination: Created Equal?* focuses on discrimination against blacks and women. *Consumer Law: Cash or Court?* examines the rights and responsibilities of buyers and sellers in a credit economy. *The Accused: Too Many Rights?* examines the rights of the accused in a hypothetical investigation of a man suspected of selling drugs. *Landlord/Tenant: Who Is Responsible?* examines the landlord/tenant relationship. *Welfare: A Right to Survive?* asks who should be eligible for aid and whether rights of welfare recipients differ from rights of those not receiving welfare. The student activity book offers a number of strategies, including mock trials, value clarification exercises, case studies, and vocabulary exercises.
- ***Juvenile Justice: Society's Dilemma.*** Color sound filmstrip, 15 minutes. Current Affairs Films (1976). Grades 7-12. Provides some background information about the development of the juvenile justice system and raises issues relating to the increase in juvenile crime, alternative means of rehabilitation, and the problem of treating youths who have committed crimes as well as those who are simply "status offenders" (juveniles who commit offenses such as truancy which are not crimes under the adult justice system).
- ***Juvenile Law.*** The Bill of Rights in Action Series. 16mm color film, 23 minutes. BFA Educational Media (1975). Grades 7-12. Contrasts due process for adults with the special procedures for juveniles and raises open-ended questions about the constitutionality of such differing treatment. Scenario involves two brothers, aged 15 and 18, who are arrested for armed robbery. The older brother is treated as an adult and released on bail. The younger one, a juvenile, is detained in a juvenile facility on the recommendation of his probation officer. Is this denial of bail constitutional? The case is taken to court, where arguments are presented on both sides. The decision is left to the audience.

SECONDARY

Law in the Schools. 16mm color film, 30 minutes. AIMS Instructional Media Services, Inc. (1976). Grades 10-12, teacher. Dramatization of violence in an urban school. The school's administrator is under immense pressure from some teachers and faculty who want more security on campus, especially police involvement. He opts for handling incidents of campus violence without using outside help. The film concludes with the shooting of an innocent student. Raises questions as to how to handle violence, the role of police, and the legal rights and responsibilities of administrators and teachers.

- ***Modern Morality: Old Values in New Settings?*** Color sound filmstrip, 14 minutes. Teacher's guide provided. Current Affairs Films (1976). Grades 7-12. This filmstrip examines some of the personal and social manifestations of the "new morality"—such as sex and violence in media, gambling sponsored by state and local government, increases in juvenile delinquency, venereal disease and

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"We find the defendent guilty but very entertaining."

"rip-offs." Considers the relationship between morality and law and notes that society is always testing value systems. Can be used to introduce discussions of "What is law?" or "What do we expect laws to do?"

- ***Our Courts: The Cost of Justice.*** Two color sound filmstrips, 15 minutes each. Prentice-Hall Media, Inc. (1974). Grades 8-12. These filmstrips are a plea for court reform. The ideals of the Constitution and Bill of Rights are juxtaposed with the realities of crowded dockets, uneven representation by counsel, delay, inefficient court administration, and capricious trial detention. "Two systems of justice"—one for the poor and one for the middle and upper classes—are discussed. Could be used to examine issues of equal protection in our justice system.
- ***Take This Woman.*** 16mm color film, 25 minutes. Films, Inc. (1973). Grades 9-12. Focuses on women's struggle for equal employment opportunity. Includes interviews with women in management positions and comments by a woman judge. Shows complaints of discrimination, mentions affirmative action plans and includes cases in which women have sued employers for discrimination. Also points out discrimination in labor unions and in other professions.
- ***Understanding Law.*** Four color sound filmstrips, 10 minutes each. Educational Activities, Inc. (1976). Grades 6-12. In *When Kids Break the Law,* three young people are caught stealing a car. The film shows how Family Court treats children differently on the basis of their records and their parents' concern. Also defines probation, detention, and Persons in Need of Supervision (PINS). *You Have Rights. . . & Responsibilities Too* defines the legal position of minors vis-a-vis their parents, the state, the school, and society in general. Explains the *Goss* and *Tinker* decisions clearly, shows how the First and Fourteenth Amendments are relevant to students today. Can be used to introduce a unit on the Bill of Rights. *So, You've Been Arrested* presents a drug case step-by-step from arrest through booking, arraignment, plea bargaining, and trial. Procedures are explained clearly, and the trial evidence is presented. The decision is left for class determination. *What Shall We Do About Crime and Criminals?* shows how contemporary prisons were a reform of earlier practices of humiliation, mutilation, and beating. Presents information about recidivism and prison conditions that can be used as the basis for class discussion on prison reform.
- ***The U.S. Constitution Confronts the Test of Time.*** Color sound filmstrip, 15 minutes. Current Affairs Films (1975). Grades 8-12. Illustrates the flexibility and broad applicability of the U.S. Constitution. Notes influence of particular Chief Justices, discusses judicial review, and asks if the Constitution is still flexible enough to meet rapidly changing needs.
- ***The Un-Making of a President.*** Two color sound filmstrips, 12 minutes each. Teacher's guide provided. Prentice-Hall Media, Inc. (1974). Grades 7-12. Filmstrips discuss both high and low points of Richard Nixon's life and presidency, with emphasis on "the system" and its constitutional foundation. Asks students to consider how well the system really worked, suggesting that the Nixon-made tapes, not "checks and balances," were the key to Congressional and Supreme Court actions.

FEDERAL FUNDS AVAILABLE

Charles J. White

Don't Overlook Money for Innovative Programs. . .

Title IV-C of the Federal Elementary and Secondary Education Act (ESEA) is the lynchpin of several programs that have provided support for law-related education. Basically, Title IV-C supports innovative and exemplary programs of all kinds in elementary and secondary school. This Title replaced the old Title III of ESEA; it supports similar programs and functions in much the same way. Three types of programs are eligible for Title IV-C funding: innovative programs, adopter/adapter programs, and programs seeking help from successful out-of-state innovators.

Innovative Programs

In a number of states—New York, Pennsylvania, New Jersey, Florida, Texas, Rhode Island, Oklahoma, and New Hampshire, to name a few—Title IV-C has supported innovative programs of law-related education. Title IV-C is a particularly good source of funds for small programs—those within one school or within one school system—since it is designed to promote local innovation. At the same time, however, there is the possibility of statewide funding under Title IV-C. As long as one local school system acts as the fiscal agent, a consortium can be set up to carry an innovation forward statewide. Size of grants can vary from as little as a few thousands dollars for local programs to as much as $100,000 for a statewide consortium. Among the areas that can be funded for both local and statewide efforts are curriculum development, teacher education, field testing, and evaluation.

These federal funds are administered by the states, so the application and funding process may differ somewhat from state to state, but here is the general procedure. In each state there is a special Title IV-C council which has the final responsibility for making Title IV-C grants. The composition of these councils varies from state to state, but generally they include teachers and administrators representing both public and private schools. Often, teachers of the arts, special education, and other special programs are represented on the councils.

Preliminary proposals must be submitted by January 1. These preliminary proposals are reviewed by a team of readers brought in by the state department of education. On the basis of their recommendations, some programs are asked to prepare more detailed proposals, generally by the end of April. The Title IV-C council then awards grants which are to start by July 1.

Grants are for one year only, but it is often assumed that projects will have three years of at least partial funding. In some states, projects may be funded for the first year at 100%, for the second year at 75%, and for the third year at 50%; in others, the same level of funding may be maintained in subsequent years and, in some instances, it may even be possible to get an increase to cover the cost of inflation. One thing that is constant from state to state, however, is that Title IV-C grants are made for just one year at a time. Programs must reapply if they wish to be refunded.

An official of the state department of education generally serves as liaison to the Title IV-C council. To find out more information about Title IV-C in your state, write your state department of education. (In many states, the federal programming office handles Title IV-C.) Many state departments of education have prepared manuals which are very extensive, containing the necessary forms and guidelines, and the priorities of the state Title IV-C council. Often state departments of education offer help to teachers and adminstrators trying to put together a Title IV-C proposal. In some states, Georgia and New Jersey for example, the place to go for help is the nearest regional office of the state department of education. In other states, seek such help from the central office.

State Facilitator Programs

These programs are a spin-off of the Title IV-C program. The U.S. Office of Education has established a National Diffusion Network, designed to spread innovations which have proved particularly successful in a state or locality.

Many states have established state facilitator programs which are responsible for spreading these innovations. The key to these programs are facilitators who are provided funds to bring in successful programs. These funds enable programs to conduct workshops, provide materials, and otherwise aid local educators.

Since at least one law-related project —the New Jersey-based Institute for Political/Legal Education (IPLE)—is nationally validated, your state facilitator should be able to help you bring a law-related resource to your state.

In most states, the state facilitator is affiliated with the state department of education; in others, the facilitator is independent. However, in both cases the state department of education should be able to provide information about the facilitator program.

Adopter/Adapter Programs

There is one more opportunity for Title IV-C funds for law-related programs. Each state reserves a portion of its Title IV-C funds for programs within the state which seek to adopt/adapt a nationally validated program in a slightly different manner than is permitted under the facilitator program. The facilitator program does not provide monies directly to programs in the state, but rather funds nationally validated programs to come into the state and conduct workshops, provide materials, etc. The adopter/adapter program, on the other hand, does provide funds to school programs within the state, so that they may successfully implement an innovation.

The guidelines for the adopter/adapter programs differ from state to state, but in some states they also permit school programs to adopt/adapt other innovations besides those nationally validated and available through the National Diffusion Network. If that were the case in your state, you would have a potentially large range of law-related programs to adopt/adapt. Check with the guidelines of your state Title IV-C council to see what the possibilities are.

. . .or Your LEAA Agency

Got an idea for law-related teacher education or curriculum development, but stymied for lack of money? The Law Enforcement Assistance Administration (LEAA), created in the late 60's as part of the war on crime, may be the answer. LEAA is one of the best sources of funds for law-related projects in the schools, but many people may not be aware of it, or may not know how to go about applying for LEAA support. We'll try to answer some of the questions you might have about LEAA in this article.

First of all, **why does LEAA fund law-related education?** The Omnibus Crime Control and Safe Streets Act authorizes LEAA to make grants in support of "public education programs concerned with the administration of justice" (Part C, Section 301 (b) of Title I). This basic provision makes school programs in law and the legal process eligible for LEAA funding. In the past seven years, LEAA agencies in at least thirty-five states have funded law-related education projects, contributing a total of more than $10 million. Some grants have been very large, encompassing city school systems or statewide programs; many others have been small, in the range of a few thousand dollars and targeted to programs in a specific school or group of schools. LEAA has funded this diverse group of programs because it believes that law-related education in the schools can be a way of increasing respect for and understanding of law, and thus lessening the possibility of anti-social behavior.

Where do you apply for LEAA funds? There are four levels of LEAA: The national office, ten multi-state offices around the country, fifty state and five territorial agencies, and many regional agencies within each state. The vast majority of school programs will make application either to their state LEAA agency or to one of the regional agencies within the state. Fortunately, these levels of LEAA control most of the funds available for projects. Eighty-five percent of LEAA grant monies are reserved for activities within the states.

How do you locate your state or regional agency? We have listed the addresses and phone numbers for each state LEAA agency at the end of this article. Through the state agency, you can locate the regional agency closest to you. In rural areas, a regional agency may encompass six or seven counties. In urban areas, it would probably encompass just the metropolitan area itself.

How are these agencies structured? All LEAA agencies are under the direction of a commission (or council)

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which usually includes elected officials, representatives of the criminal justice system (such as judges, juvenile officers, and prosecuting attorneys), and law enforcement officials. Generally, this governing group is divided into committees which consider various aspects of LEAA's work. The day-to-day operation of the agency is under the direction of a professional staff. Most regional agencies have at least a one-person full-time staff.

How do the agencies operate? The governing body periodically holds meetings at which it receives and reviews applications for funding. Probably the professional staff will have previously reviewed applications and have made recommendations as to which should be funded and at what level. Generally, recipients are identified nine to twelve months before the starting date of the project.

How can you get LEAA funding? The first step is to determine your state's funding policy. Each state has prepared an annual plan indicating multi-year objectives that are priority areas for funding. This plan will help you determine the areas that provide the most likely sources of funds for your proposal. Many LEAA agencies have prepared handbooks containing guidelines for applicants. These usually provide all of the necessary information. Also, it is a good idea to get in touch with the staff of the agency, since it may well be able to help you by offering suggestions that will bring your proposal more in line with agency policy.

What if education isn't a priority? Many LEAA agencies may feel that education is not their responsibility, but don't let this deter you. Use your meetings with the professional staff to point out the relationship between law-related education and LEAA objectives. Also, find out which committees of the governing body will be reviewing your proposal. Some LEAA agencies may have a committee on education, but most probably do not. The committee on courts—which exists in one form or another in every agency—may review education proposals, and,

STATE LEAA AGENCIES

Alabama
Alabama Law Enforcement Planning Agency
2863 Fairland Drive
Building F, Suite 49
Executive Park
Montgomery, AL 36111
205/277-5440

Alaska
Alaska Criminal Justice Planning Agency
Pouch AJ
Juneau, AK 99801
907/465-3535

Arizona
Arizona State Justice Planning Agency
Continental Plaza Building, Suite M
5119 North 19th Avenue
Phoenix, AZ 85051
602/271-5466

Arkansas
Governor's Commission on Crime and Law Enforcement
1000 University Tower
12th at University
Little Rock, AR 72204
501/371-1350

California
Office of Criminal Justice Planning
7171 Bowling Drive
Sacramento, CA 95823
916/445-9156

Colorado
Division of Criminal Justice
Department of Local Affairs
1513 Sherman Street, Room 419
Denver, CO 80203
303/892-3331

Connecticut
Connecticut Justice Commission
75 Elm Street
Hartford, CT 06115
203/566-3020

Delaware
Delaware Agency to Reduce Crime
1228 Scott Street
Wilmington, DL 19806
203/571-3431

District of Columbia
Office of Criminal Justice Plans and Analysis
Munsey Building, Room 200
1329 E Street, NW
Washington, DC 20004
202/629-5063

Florida
Bureau of Criminal Justice Planning and Assistance
620 S. Meridian
Tallahassee, FL 32304
904/488-6001

Georgia
Office of the State Crime Commission
1430 West Peachtree Street, NW,
Suite 306
Atlanta, GA 30309
404/656-3825

Hawaii
State Law Enforcement and Juvenile Delinquency Planning Agency
1010 Richards Street
Kamamalu Building, Room 412
Honolulu, HI 96800
808/548-3800

Idaho
Bureau of Law Enforcement Planning Commission
700 West State Street
Boise, ID 83707
208/964-2364

Illinois
Illinois Law Enforcement Commission
120 South Riverside Plaza, 10th Floor
Chicago, IL 60606
312/454-1560

Indiana
Indiana Criminal Justice Planning Agency
215 North Senate
Indianapolis, IN 46202
317/633-4773

Iowa
Iowa Crime Commission
3125 Douglas Avenue
Des Moines, IA 50310
515/281-3241

Kansas
Governor's Committee on Criminal Administration
503 Kansas Avenue, 2nd Floor

since judges come into daily contact with individuals who have gotten into trouble because of lack of knowledge of the law, they may be receptive to such proposals. If you have already worked with persons in the criminal justice system or if you contemplate working with such persons, get them involved at this stage. They can help you in your dealings with professional staff, but even more important, they may be able to meet with some of the attorneys, judges, and law-enforcement officials on the appropriate committee of the governing body. All of these contacts should serve the important function of educating the agency on the need for law-related education and its importance to the work of LEAA.

What can you do to improve your chances? One good tip is that applicants for LEAA funding should try to be present at the regional or state council meeting at which their application will be reviewed, so that they can answer the questions of council members. This is particularly important since council members are often unfamiliar with law-related education and may well misunderstand the purposes of the program. If no one is there to explain what the program proposes and to address these concerns, the proposal may not be funded.

In some states, the state and regional council meeting is open to the public by virtue of sunshine (open meeting) laws. Even without such laws, however, councils may allow applicants to appear at the meetings to make brief presentations and answer questions. You may have to take the initiative in finding out when such a meeting is going to be held, and in seeing that you're invited to attend, but this initiative could well make the difference between success and failure.

What should you prooose? That, of course, will depend greatly on your sense of what your students need and what a sound educational program requires. In general, LEAA might be more sympathetic to proposals which involve people associated with the criminal justice system—lawyers, judges, police,

Topeka, KS 66603
913/296-3066

Kentucky
Kentucky Department of Justice
Executive Office of Staff Services
209 St. Clair Street, 3rd Floor
Frankfort, KY 40601
502/564-3253

Louisiana
Louisiana Commission on Law Enforcement and Administration of Criminal Justice
1885 Wooddale Boulevard, Room 615
Baton Rouge, LA 70806
504/389-7515

Maine
Maine Criminal Justice Planning and Assistance Agency
11 Parkwood Drive
Augusta, ME 04330
207/289-3361

Maryland
Governor's Commission on Law Enforcement and Administration of Justice
Executive Plaza One, Suite 302
Cockeysville, MD 21030
301/666-9610

Massachusetts
Committee on Criminal Justice
110 Tremont Street, 4th Floor
Boston, MA 02108
617/727-5497

Michigan
Office of Criminal Justice Programs
Lewis Cass Building, 2nd Floor
Lansing, MI 48913
517/373-3992

Minnesota
Governor's Commission on Crime Prevention and Control
444 Lafayette Road, 6th Floor
St. Paul, MN 555101
612/296-3133

Mississippi
Mississippi Criminal Justice Planning Division
Office of the Governor
723 North President Street
Suite 400
Jackson, MS 39202
601/354-4111

Missouri
Missouri Council on Criminal Justice
P.O. Box 1041
Jefferson City, MO 65101
314/751-3432

Montana
Board of Crime Control
1336 Helena Avenue
Helena, MT 59601
406/499-3604

Nebraska
Nebraska Commission on Law Enforcement and Criminal Justice
State Capitol Building
Lincoln, NE 68509
402/471-2194

Nevada
Commission on Crime, Delinquency and Corrections
430 Jeanell - Capitol Complex
Carson City, NV 89710
702/885-4404

New Hampshire
Governor's Commission on Crime and Delinquency
169 Manchester Sreet
Concord, NH 03301
603/271-3601

New Jersey
State Law Enforcement Planning Agency
3535 Quaker Bridge Road
Trenton, NJ 08625
609/477-3741

New Mexico
Governor's Council on Criminal Justice Planning
425 Old Santa Fe Trail
Santa Fe, NM 87501
505/827-5222

New York
NYS Division of Criminal Justice Services
270 Broadway, Rm. 807
New York, NY 10007
212/488-4868

probation officers, prosecutors, etc.—rather than school people alone. That suggests, then, that these people be prominently involved on advisory committees and in teacher education, curriculum development, classroom presentations or other aspects of your program.

What about the paperwork? There's some good news here. Most LEAA agencies prefer to consider first a brief summary of the proposal focusing on the need for your program, what you propose to do, how much money will be required, who will be involved, and what outcomes you expect. This can be as brief as two or three typewritten pages. Should this initial proposal be encouraged, you would, of course, be required to submit a more detailed proposal, but even so, most small projects would probably not be burdened by paperwork.

Are there any other opportunities under LEAA? Schools are eligible for special new LEAA funds which may be particularly appropriate for law-related programs. For example, a grants program to prevent juvenile delinquency has a small amount of money available to support projects which increase or expand social, cultural, educational, and other services to youth in order to prevent juvenile delinquency. For information, contact an LEAA agency in your state or Prevention Initiative, Office of Juvenile Justice, LEAA, 633 Indiana Avenue, N.W. Washington, D. C. 20531, (202) 376-3776. Another program, still in the planning stages, will involve a discretionary grants program between LEAA and the Office of Education focusing on problems of school violence. For information, contact Serious Crime Program, Discretionary Grants, Office of Juvenile Justice, at the address above.

Where can you turn for further help? Two books provide a lot of useful information. *Law-Related Education in America: Guidelines for the Future* is a report commissioned by LEAA and designed to help both applicants and agencies which consider law-related education applications. *The $$ Game: A Guidebook on the Funding of Law-Related Educational Programs* contains articles by many persons who have successfully secured funding for law-related programs. Many of these concentrate of LEAA.

Both of these publications are available from YEFC, 1155 E. 60th Street, Chicago, Illinois 60637. Of course, we are also available to answer questions and to provide whatever assistance we can. Please don't hesitate to call on us.

STATE LEAA AGENCIES

North Carolina
Law and Order Section
N.C. Department of Natural and Economic Resources
P.O. Box 27687
Raleigh, NC 27611
919/829-7974

North Dakota
North Dakota Combined Law Enforcement Council
Box B
Bismark, ND 58501
701/224-2594

Ohio
Ohio Dept. of Economic and Community Development
Administration of Justice
30 East Broad Street, 26th Floor
Columbus, OH 43215
612/466-7610

Oklahoma
Oklahoma Crime Commission
3033 North Walnut
Oklahoma City, OK 73105
405/521-2821

Oregon
Law Enforcement Council
2001 Front Street, NE
Salem, OR 97303
503/378-4347

Pennsylvania
Governor's Justice Commission
Department of Justice
P.O. Box 1167
Federal Square Station
Harrisburg, PA 17108
717/787-2042

Rhode Island
Governor's Justice Commission
197 Taunton Avenue
E. Providence, RI 02914
401/277-2620

South Carolina
Office of Criminal Justice Programs
Edgar A. Brown State Office Building
1205 Pendleton Street
Columbia, SC 29201
803/758-3573

South Dakota
Division of Law Enforcement Assistance
200 West Pleasant Drive
Pierre, SD 57501
605/224-3665

Tennessee
Tennessee Law Enforcement Planning Agency
4950 Linbar Drive
The Browing-Scott Building
Nashville, TN 37211
615/741-3521

Texas
Criminal Justice Division
Office of the Governor
411 West 13th Street
Austin, TX 78701
512/475-4444

Utah
Utah Council on Criminal Justice Administration
255 South 3rd Street - East
Salt Lake City, UT 84111
801/533-5731

Vermont
Governor's Commission on the Admmistration of Justice
149 State Street
Montpelier, VT 05602
802/828-2351

Virginia
Division of Justice and Crime Prevention
8501 Mayland Drive
Parham Park
Richmond, VA 23229
804/786-7421

Washington
Law and Justice Planning Office
Office of Community Development
Insurance Building, Room 107
Olympia, WA 98504
206/753-2235

West Virginia
Governor's Committee on Crime, Delinquency and Corrections
Morris Square, Suite 321
1212 Lewis Street
Charleston, WV 25301
304/345-8814

Wisconsin
Wisconsin Council on Criminal Justice
122 West Washington
Madison, WI 53702
602/266-3323

Wyoming
Governor's Planning Committee on Criminal Administration
State Office Building East
Cheyenne, WY 82002
307/777-7716

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NEW STATEWIDE PROJECTS

Wisconsin

The Wisconsin Bar Foundation and the Wisconsin Department of Public Instruction this winter received a grant from the state LEAA agency to support the development of law-related curriculum models for Wisconsin schools. The new Law-Related Education Project has already established ten pilot programs, building upon expressed teacher interest and existing teacher-attorney teams established through Project Inquiry, the Wisconsin Bar Foundation's extensive lawyer-in-the-classroom program. Most of the programs are at secondary level, with one group focusing on the elementary grades.

These pilot programs will develop models which reflect a variety of approaches and subject emphases. The models will range from single units on criminal and consumer law to a K-12 curriculum encompassing both conceptual and practically-oriented approaches to the legal system, lawmaking, and government.

Project staff is providing materials and assistance to participating teachers and attorneys, and helping the pilots exchange information and ideas. Additional ideas and expertise come from the community teams created to support the local projects, each consisting of teachers, attorneys, and representatives of law enforcement, social services, the juvenile justice system, business, and student groups.

The developmental work that has been done during the spring semester will reach its culmination in a summer workshop emphasizing curriculum writing and teaching strategies. In this workshop the materials from the various local projects will be revised and readied for implementation during the fall semester. This period of field-testing is expected to produce models suitable for dissemination to other interested Wisconsin schools, and the final period of the statewide project's first year will be devoted to making these materials available to an increasing number of schools, hopefully for a second and expanded phase of the project.

For further information, contact Kathleen Cruikshank, Project Director, Law-Related Education Project, Room 530, 126 Langdon Street, Madison, Wisconsin 53702, 608/266-8249.

South Dakota

South Dakota is now winding up the first year of a projected three-year statewide law-related education program. This year, the program has trained over 100 teachers in Rapid City and Hot Springs, with the major emphasis on introducing them to law-related materials and concepts, integrating legal concepts into their courses of study, and field-testing law-related materials. Approximately $30,000 has already been earmarked for the purchase and field-testing of such materials.

The program's total budget this year was approximately $70,000, most of it contributed by the state LEAA agency, with matching funds from local districts, the state department of education, and the South Dakota State Bar. Project leaders report that the State Bar is very committed to the project and has provided strong support to the program in many ways beyond their financial contribution.

This summer, the project plans to offer a one-week workshop on law-related education as part of the state department of education's two-week Current Trends workshops. The Current Trends workshops are offered simultaneously (from Aug. 1-12) at Black Hills State College in Spearfish, and at South Dakota State University in Brookings. At Spearfish the law-related education workshop will be offered August 1-5; it will be repeated at Brookings August 8-12.

For further information, contact Beth Taylor, Director, In-Service Education and Staff Development, Department of Elementary and Secondary Education, Office Building 3, Pierre, South Dakota 57501, 605/224-3139; or Dr. Marvin Scholten, Director, Law-Related Education Project, South Dakota State University, Education Department, Brookings, South Dakota 57006, 605/692-4498.

Connecticut

The Connecticut Consortium for Law-Related Education, a broad-based group of educators, lawyers, and community representatives has accomplished a great deal in its first year of existence. The Consortium, which was founded as a result of interest generated at an ABA Regional Conference in New England last May, has (1) provided centralized resource centers for law-related education materials; (2) begun putting together a curriculum guide on national and state materials that will be available by school year 77-78, (3) established a file of available community resources; (4) conducted a one-day conference in November that attracted more than 150 teachers and lawyers from around the state; (5) run a series of afternoon workshops at the state's six regional education service centers for elementary (and especially K-3) teachers; and (6) planned a three-week teacher institute this summer for thirty elementary and secondary teachers. The summer workshop will feature instruction in both substantive law and teaching methodology. It will be conducted in late June and early July, in the capitol region.

Funding thus far has come from the Connecticut State Department of Education. The Consortium is currently seeking additional sources of funds.

For further information, contact Jackie Danzberger, Chairman, Consortium for Law-Related Education, Hartford Graduate Center, 275 Windsor Street, Hartford, Connecticut 06120, 203/525-9886; or Roberta Kurlantzick, Coordinator, Consortium for Law-Related Education, Connecticut State Department of Education, P. O. Box 2219, Hartford, Connecticut 06115, 203/566-3873. —CJW

SUPREME COURT (continued from page 4)

Looking at the case from a different point of view, the Court of Appeals reversed. This court felt that the Fourteenth Amendment required an examination of not only the Village's *intent* in denying the request, but also the *effect* of the denial. Since the Village was nearly all white and had no other plans for building racially integrated housing, the court ruled that the denial of the MHDC proposal had a racially discriminatory effect and could be tolerated only if it served compelling interests. The court concluded that neither the buffer policy nor the desire to protect property values met this "compelling" standard, and ruled that the denial of MHDC's request violated the Equal Protection Clause.

When the case reached the Supreme Court, however, Justice Powell, writing on behalf of the majority, held that it is necessary to prove discriminatory *intent* in order to establish a violation of the Equal Protection Clause. In essence, the majority applied the same test as the District Court, and ruled in favor of the Village.

Proving Discriminatory Intent

Under this ruling the actions of policy-makers become crucial, so the majority provided some guidelines that would help determine if there is in fact an intent to discriminate. Sometimes a "clear pattern" of discrimination can be seen, Powell explained, in legislation which at first glance appears racially neutral. He illustrated this point by referring to a classic equal protection case in which a San Francisco ordinance requiring licenses for laundries in wooden buildings was alleged to discriminate against Chinese. The ordinance did not mention race, and on its face appeared racially neutral, but in fact Chinese were far more likely than whites to operate laundries in wooden buildings. Furthermore, the ordinance was not enforced against the whites who operated laundries in wooden buildings, while it was enforced against the Chinese laundries (*Yick Wo v. Hopkins*, 118 U.S. 356 [1886]).

The Court also suggested other important factors. What is the historical background of the law's passage? Were there any departures from normal legislative procedures? Had others in similar circumstances been treated more favorably? In answering these questions, the Court said that it is appropriate to examine statements by members of the decision-making body, minutes of meetings, and committee reports, all of which may shed light on intent.

Reviewing the evidence in this case, the majority agreed that the Village's decision to prohibit construction of the project fell more heavily on members of minority groups, but it found no other evidence of discriminatory intent. The Court indicated that this would be a far different case had the Village changed the zoning code when it learned of the planned development, or if the Village had granted similar requests to others on previous occasions. The facts clearly showed, however, that the fifteen-acre area in question had been zoned solely for single-family dwellings since 1959, the year when Arlington Heights first adopted its zoning map, and that the Village was "undeniably committed to single-family homes as its dominant residential land use." The Court also found that the rezoning request had been handled according to the usual procedures, and the denial was based on criteria which had been established and applied for many years. Therefore, the Court found no equal protection violation in the Village's refusal to rezone.

A Change of Standards?

Some observers were surprised by the Court's finding that a racially discriminatory effect was not sufficient to prove an Equal Protection Clause violation. They pointed to statements in other Court decisions which, they felt, suggested the opposite conclusion. In *Palmer v. Thompson*, for example, a case involving a challenge to a Jackson, Mississippi plan to desegregate its recreational facilities, the Court stressed the need to examine the objective effects of legislation rather than trying to second-guess underlying intent in Equal Protection cases: ". . . there is an element of futility in a judicial attempt to invalidate a law because of the bad motives of its supporters. If the law is struck down for

PRIOR EQUAL PROTECTION DECISIONS

For those interested in learning more about the Supreme Court's interpretation of the Equal Protection Clause, here is a brief list of some important cases:

Railway Express v. New York, 336 U.S. 106 (1949)—Court found no equal protection violation in a state law prohibiting all advertising on delivery trucks other than advertising of the owner's products. "It is no requirement of equal protection that all evils of the same [kind] be eradicated or none at all," the Court said.

Brown v. Board of Education, 347 U.S. 483 (1954)—Court found racially segregated public school systems to be unconstitutional under the Equal Protection Clause. According to the Court, "Separate educational facilities are inherently unequal."

Harper v. Virginia Board of Elections, 383 U.S. 663 (1966)—Court found unconstitutional a state law which required citizens to pay a poll tax before being able to vote. "Wealth or fee paying," the Court noted, "has no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned."

Levy v. Louisiana, 391 U.S. 68 (1968)—Court found unconstitutional a state law which allowed legitimate but not illegitimate children to recover money damages as a result of their mother's wrongful death. "Why should the illegitimate child be denied rights merely because of his birth out of wedlock?" the Court asked.

Dandridge v. Williams, 397 U.S. 471 (1970)—Court upheld state law which denied additional welfare payments for any fifth or succeeding child in a family on welfare. "In the area of economics and social welfare," the Court noted, ". . . the Constitution does not empower this Court to second-guess officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients."

Stanley v. Illinois, 405 U.S. 645 (1972)—Court held unconstitutional a state law which required, in cases of child custody when one parent dies, a hearing to determine parental fitness for unmarried fathers, but not for married or divorced parents or unmarried mothers. "A father, no less than a mother, has a

this reason, rather than because of its facial content or effect, it would presumably be valid as soon as the legislature or relevant governing body repassed it for different reasons" (403 U.S. 217, 225 [1971]). In the school desegregation case of *Wright v. Council of City of Emporia*, the Court reiterated this theme, explaining that its Equal Protection analysis " . . . focused upon the effect—not the purpose or motivation" of the school board's action in determining whether their method of dismantling a dual school system was permissible: "The existence of a permissible purpose cannot sustain an action that has an impermissible effect" (407 U.S. 451, 462 [1972]).

While Justice Stevens did not take part in the *Arlington Heights* case, his concurrence in an earlier court case, *Washington v. Davis*, provides an interesting perspective on the complex problems addressed here. In *Washington v. Davis*, Stevens pointed out that "[i]t is unrealistic, on the one hand, to require the victim of alleged discrimination to uncover the actual objective intent of the decision-maker or, conversely, to invalidate otherwise legitimate action simply because an improper motive affected the deliberation of a participant in the decisional process." He went on to suggest that "the line between discriminatory purpose and discriminatory impact is not nearly as bright, and perhaps not quite as critical, as the reader of the Court's opinion might assume."

The Williamsburgh Case: Redistricting on the Basis of Race

The *Arlington Heights* case is typical of most race-related equal protection cases in that it involves members of a minority group who claim that they have been denied their rights under the law. However, as a result of many new laws which seek to remedy past discrimination by according minorities special treatment, more and more members of the majority are protesting the law unfairly discriminates against *them*. These claims of "reverse discrimination" confront courts with the troublesome question of whether legislation passed for very noble reasons violates the Equal Protection Clause if it thereby places members of the majority in a disadvantaged position. One such case, *United Jewish Organizations of Williamsburgh, Inc. v Carey* (45 U.S.L.W. 4221, March 1, 1977), concerned a group of Hasidic Jews in Brooklyn who claimed that they were discriminated against when New York State used racial considerations in redrawing legislative district lines under the requirements of the federal Voting Rights Act.

The case arose when three New York counties were found to have violated the federal Voting Rights Act, which had been passed in 1965 to assure that minority group members were fairly represented in the electoral process. As a result, New York was required to submit its 1972 reapportionment plan for these counties to the United States Attorney General for his approval, in order to make certain that the plan "had neither the purpose or effect of abridging the right to vote by reason of race or color."

The Attorney General rejected the 1972 plan because it diluted minority (black and Puerto Rican) voting strength by created a few heavily minority districts while dividing the remaining minority voting strength among a number of other districts. As a result of consultations with the Justice Department, New York then submitted a new plan which created fewer heavily minority districts and more districts in which minorities constituted at least 65% of the voting-age adults. This new plan was approved and put into effect in 1974.

Williamsburgh, a Brooklyn neighborhood, was one of the communities affected by the reapportionment plan. The community was previously located in one assembly and one senate district, but the revised plan split it between two senate and two assembly districts. Williamsburgh is also the home of about 30,000 Hasidic Jews, a group which adheres strictly to the traditions of the Jewish faith.

Considering the distinctiveness of the Hasidim, and the long history of discrimination against them and other Jews, one would think that they are a minority as deserving of special protection as blacks and Puerto Ricans. However, the Voting Rights Act was motivated explicitly by a desire to

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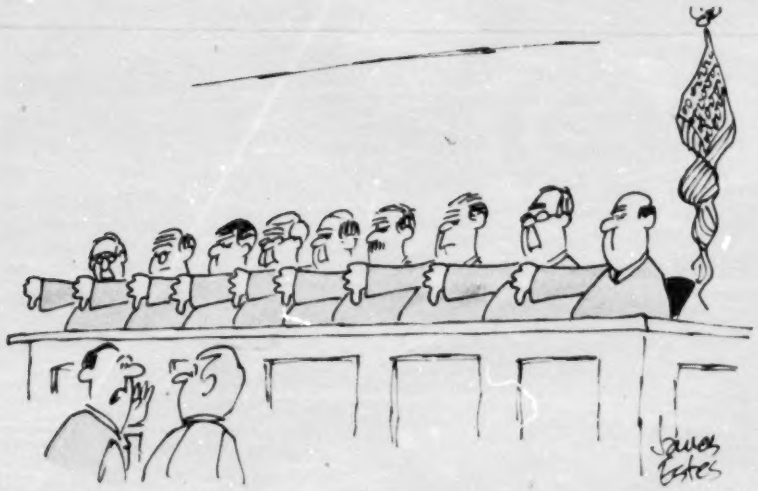
constitutionally protected right to the companionship, care, custody, and management of the children he has sired and raised," the Court held.

Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972)—Court upheld a private club's constitutional right to refuse to serve liquor to a white member's black guest in the dining room or bar. Discussing the requirement of state action in violation of the Fourteenth Amendment, the Court held that "where the impetus for the discrimination is private, the state must have significantly involved itself with [the] invidious discrimination" to make it unconstitutional.

Frontiero v. Richardson, 411 U.S. 677 (1973)—Court found unconstitutional a federal law which provided that wives of servicemen were dependents for purposes of obtaining certain benefits, but that husbands of servicewomen were not dependents unless they could prove that they received over one-half of their support from their wife. Referring to the government's claim of "administrative convenience" the Court stated, "the Constitution recognizes higher values than speed and efficiency."

Cleveland Board of Education v. Lafleur, 414 U.S. 632 (1974)—Court found unconstitutional a public school board rule which required a pregnant teacher to take unpaid maternity leave five months before the expected childbirth. The "arbitrary cutoff dates embodied in the mandatory leave rules," the Court held, "have no rational relationship to the valid state interest of preserving continuity of instruction" or the "necessity of keeping physically unfit teachers out of the classroom."

Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976)—Court upheld state law requiring uniformed state police to retire at age 50. According to the Court, "that the state chooses not to determine fitness more precisely through individualized testing after age 50 is not to say that the objective of assuring physical fitness is not rationally furthered by a maximum age limitation . . . a state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect."



"FRANKLY, I EXPECTED SOMETHING A LITTLE MORE ELOQUENT FROM THESE GUYS!"

protect the rights of groups which had a history of being victims of a special kind of discrimination—the abridgment of their right to vote. In addition, the Hasidim could offer no evidence to demonstrate that New York had any intent to discriminate against them.

As a result, the Hasidim argued in their appeal to the Supreme Court that the Act discriminated against whites generally, rather than against them specifically. They contended that "no reason other than race" could be used to justify the reapportionment and that the use of such a racial quota was an unconstitutional violation of the Equal Protection Clause.

Writing an opinion in which six other justices concurred, at least in part, Justice White argued that the plan was justified under the Voting Rights Act. He first reviewed the history of the Act, noting that it had been passed as a broad measure which Congress felt was required in order to prevent states from continually "contriving new rules of various kinds for the sole purpose of perpetrating voting discrimination." Given this intent, it was necessary for states to think in racial terms in taking corrective action. In the words of the Court of Appeals which had earlier heard the case, because the Act "necessarily deals with race or color, corrective action under it must do the same."

"No Racial Slur"

Justice White then went one step beyond this, considering the more difficult question of whether the plan would be justified *even if it were not authorized by the Voting Rights Act.* Only two other members of the Court, Justices Stevens and Rehnquist, were willing to join him in concluding that even if such plans were not required by federal law, there was still a constitutional justification for them. In support of this position, Justice White explained that "there is no doubt that the state deliberately used race in a purposeful manner." But, he argued, "its plan represented no racial slur or stigma with respect to whites or any other race." He also noted that in the deliberate reliance on race to increase the size of nonwhite majorities there was no "fencing out of the white population from participation in the political process of the county, and the plan did not minimize or unfairly cancel out white voting strength." Admitting that whites in certain districts might not be represented by a member of their own race, he concluded that "as long as whites in Kings County, as a group, were provided with fair representation," they had no claim of either racial discrimination or of the abridgement of their right to vote on grounds of race.

"Sensitive" Issues

Justice Brennan had his own way of looking at the problem. In a separate concurring opinion, he agreed with Justice White that the New York plan was a reasonable method of securing compliance with the Voting Rights Act, and could be sustained on that basis alone. However, he wasn't certain that the plan would have been constitutional had it not been required by the Voting Rights Act. He was, in fact, troubled by "the serious questions of fairness" raised by the "overt racial number" employed in drawing voting districts.

He noted that if the plan had downgraded minority representation in the electoral process or had been motivated by racial discrimination, the Court would have promptly labeled the state's reliance on race as "suspect" and would have prohibited its use. He then asked how the Court could approve of the overt use of race when the majority was thereby disadvantaged.

He reasoned that the constitutionality of such measures would have to rest on the "general propriety of so-called 'benign discrimination'," the state's right to discriminate in favor of disadvantaged groups. He pointed out, however, that the Court has not directly confronted the question of whether benign discrimination was constitutional, an issue which he said raised "sensitive" moral and political questions. For example, a policy favoring minorities might suggest that they are inferior because they need special protection, or it might be a device to segregate the races, stimulate race consciousness, and pit the races against each other.

Moreover, such preferential policy might well work real injustices against the majority, and particularly against the most discreet and insular of whites (such as the Hasidic community in this case). Given these misgivings, he said that he

was "wholly content to leave this thorny question until another day" when the Court would be forced to treat the reverse discrimination issue directly.

A Vigorous Dissent

Though they could not all agree on every portion of Justice White's decision, seven of the eight members of the Court who considered the case (Justice Marshall did not take part) concurred in the holding. The one exception was Chief Justice Warren Burger, who issued a vigorous dissent.

Beginning his opinion by calling the districting plan "a strict quota approach," Justice Burger went on to say that the "drawing of political boundary lines with the sole, explicit objective of reaching a predetermined racial result" was clearly an example of racial discrimination which denied equal protection of the laws under the Fourteenth Amendment. Furthermore, the fact that New York created the plan in compliance with the Voting Rights Act did not make it constitutional. He recognized that prior cases had upheld the constitutionality of the Voting Rights Act itself, but argued that the present case involved a constitutional violation when New York mechanically used a racial quota to comply with the Act.

Justice Burger further contended that there was no evidence to show that establishing a minimum percentage of minority voting strength within a district was a "reasoned response" to the problem of past discrimination. He pointed out that four of the five allegedly "safe" non-white districts established by the plan had since elected white representatives, demonstrating that groups do not automatically vote in convenient blocks. Rather, the "white" category in this county, he noted, is composed of a galaxy of ethnic and religious groups, while the "non-whites" contained many divergent groups as well.

In a final comment, the Chief Justice declared:

> The result reached by the Court today in the name of the Voting Rights Act is ironic. The use of a mathematical formula tends to sustain the existence of ghettos by promoting the notion that political clout is to be gained or maintained by marshalling particular racial, ethnic or religious groups in enclaves. . . . The device employed by the State of New York, and endorsed by the Court today, moves us one step farther away from a truly homogeneous society.

The Bakke Case: Reverse Discrimination Revisited

The concerns which Chief Justice Burger raised in his dissent, and which Justice Brennan was so anxious to avoid discussing, will be faced directly this fall when the Supreme Court hears the case of *Bakke v. The Regents of the University of California*. The case involves a charge that the medical school of the University of California violated the Fourteenth Amendment when it denied admission to a white applicant while admitting less qualified minority students under a special admissions program. The case will mark the first time the Court has had to take a stand on the so-called "reverse discrimination" or "benign discrimination" issue.

The case arose when Allan Bakke, a white person, applied in 1973 and 1974 for admission to the medical school of the University of California at Davis. Bakke was denied admission both years, and was not admitted to any other medical school. He filed a complaint against the University, alleging that he was qualified for admission and that his application was rejected only because he was white. He claimed that the University's discrimination on the basis of race violated the Fourteenth Amendment's Equal Protection Clause.

The University responded not only by defending itself against the charge but also by asking the courts to declare once and for all that its admission program was constitutional. Under that program, most students were evaluated by a regular admission committee which considered an applicant's grades, test scores, and letters of recommendation as well as such subjective criteria as motivation, character and imagination in its admission decision.

Four of the five allegedly "safe" non-white districts had since elected white representatives.

However, those students who were determined to be "educationally or economically disadvantaged" were evaluated by a special admission committee, which was made up of students and faculty who were predominantly minority group members. These students were evaluated under different standards, and the special admission committee recommended admission for some students who would have been disqualified by the regular committee.

In 1973 and 1974, 16 of the 100 total places available in each medical school class were set aside for students admitted under the special admission program. In both of these years, all students admitted under this program were members of minority groups.

A 6 to 1 Decision

The California Supreme Court decided by a 6 to 1 margin that Bakke had been deprived of his rights under the Equal Protection Clause. The Court held that the admission procedure, although established to assist minority group members, violated the constitutional rights of the majority when qualified applicants were denied admission solely because of their race.

In reaching its decision, the court first discussed the proper constitutional test to be applied. In this regard, the court was faced with the difficult problem avoided in the *Williamsburgh* case: should race be regarded as a "suspect" trait when it is used to benefit minorities instead of to discriminate against them? The majority reasoned that since the Fourteenth Amendment was designed to protect "any person," racial classifications which discriminated against the majority were just as suspect under the Equal Protection Clause as those which discriminated against a minority. The court therefore imposed the most stringent standard of proof on the University, requiring it to show that the special admission program was necessary to serve a "compelling

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interest," and that the objectives of the program could not be achieved by some other means which would impose a lesser burden on the rights of the majority.

After examining the goals of the program, the court found that the University had not met this standard. It decided the goals of the admission program—integrating the medical profession and providing better medical care fo minorities —could be achieved by other means. It suggested, for example, that the medical school use different criteria for admission, that it institute aggressive programs to identify, recruit and provide remedial schooling for disadvantaged students of all races, and/or that it increase the number of places available in each medical school class.

Judge Tobriner dissented. He argued that racial classifications should not be regarded as "suspect" when they were used to promote integration or to overcome the effects of past discrimination. Instead, these type of remedial or "benign" racial classifications should be upheld if justified under the traditional "rational relationship" test. Applying this test, he concluded that the racial classification used in the special admission program was directly and reasonably related to promoting the goal of integration, and found that it should therefore be upheld as constitutional under the Fourteenth Amendment.

Since the United State Supreme Court has not yet decided this case, these important equal protection questions are at this time unresolved. When it does decide this case, though, the Court will have to wrestle with many difficult issues which will have implications far beyond who can attend medical school at the University of California.

"Thorny Questions"

Clearly, we are no longer in an age where the Equal Protection Clause is, in the words of Justice Oliver Wendell Holmes, the "usual last resort of constitutional arguments." The "thorny questions" which Justice Brennan would prefer left for another day are increasingly before the courts, affecting us all in such vital areas as voting, housing, education, employment, marriage, privacy, and criminal procedure.

The fundamental question thus arises as to whether or not the courts have already gone too far in their interpretation and application of the Equal Protection Clause. Do court decisions reflect, for example, very subjective judgments regarding which test to apply and when equality is required under the Constitution? If so, are the courts becoming "super-legislatures," substituting their judgment for the judgment of legislatures, school boards, and other decision-making bodies? Might it not be preferable if the courts once again applied the basic test of "reasonableness"—and uphold all laws which are neither arbitrary nor invidious—thereby providing ample opportunity for public debate on these troublesome questions and leaving their solution to the good-faith efforts of appropriate decision-making bodies throughout the country?

Or are the many instances of past discrimination in the enactment and application of the law compelling reasons to question the effectiveness of other means of dealing with these matters? Are not subjective judgments a traditional part of judicial decision-making? And, considering the singular complexity of these issues, should we not expect the courts to initially provide somewhat indefinite standards as they seek to develop more definitive constitutional guidelines?

About the only thing which seems certain is that these questions won't suddenly disappear. The Court will be grappling with equal protection issues for some time to come.

EQUAL PROTECTION RESOURCES

PRINT

Congressional Research Service, Library of Congress, *The Constitution of the United States of America, Analysis and Interpretation*. Washington, D.C.: U.S. Government Printing Service, 1973.

Detailed analysis of the Constitution, including an explanation of the judicial interpretation of each provision and a discussion of the significant Supreme Court cases in each area.

Laughlin McDonald, *Racial Equality*. Skokie Illinois: National Textbook Company, 1977.

Textbook tracing the development of the concept of racial equality in our legal system through an examination of landmark Supreme Court cases and related historical events.

Nathan Lewin, "Trivializing Discrimination," *The New Republic*, (April 2, 1977), pp. 19-21.

Article by lawyer in the *Williamsburgh* case which critically examines the Supreme Court's approach in deciding recent equal protection cases.

Robert M. O'Neil, *Discriminating Against Discrimination: Preferential Admissions and the DeFunis Case*. Bloomington, Indiana: Indiana University Press, 1975.

An attorney-educator's analysis of the constitutional, social, and moral issues raised by preferential admissions policies based on race.

Bernard Schwartz, ed., *The Fourteenth Amendment*. New York: New York University Press, 1970.

A collection of articles discussing the historical background and contemporary constitutional issues of the Fourteenth Amendment.

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FILM

Isidore Starr, *Equality Under Law: The Lost Generation of Prince Edward County*. Our Living Bill of Rights Series. Chicago: Encyclopaedia Britannica Educational Corporation, 1967.

Documents the results and implications of the Prince Edward County School Board's decision to close down their schools rather than comply with a court desegregation order.

Bernard Willets. *Equal Opportunity*. The Bill of Rights in Action Series. Los Angeles: BFA Educational Media, 1970.

Following the promotion of a black factory worker over a white who has seniority, the white files a complaint with the union and the matter is brought before a labor arbitration board.

UP AND COMING

SUMMER PROGRAMS FOR TEACHERS

Numerous law-related teacher education institutes and workshops will be offered this summer. Brief descriptions of some of these institutes appear below; others are noted in the description of new statewide programs on page 25. For a free copy of our complete listing of 1977 Summer Teacher Education Programs, please contact us at the American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

In **Illinois**, the Chicago Bar Foundation will be sponsoring the "Law in American Society Foundation's 12th Annual Summer Institute in Law-Focused Education." The institute will be held in Chicago, and will include two three-week introductory sessions (June 14-July 1 and July 5-July 22) and two one-and-one half week advanced sessions (June 22-July 1 and July 5-July 15). Participants can receive eight quarter hours of graduate credit; some partial scholarships are available. For further information: contact: Richard O'Connor, Assistant Director, LIASF, 33 North LaSalle Street, Suite 1700, Chicago, Illinois 60602 (312-346-0963).

Two workshops will be held at the University of Notre Dame, Notre Dame, **Indiana**. The "Workshop on Individual Rights and Criminal Justice" is scheduled for June 13-17; the "Workshop on Consumer Rights and Landlord-Tenant Relations" will run from June 20-24. Both workshops are sponsored by The University of Notre Dame, Indiana Project for Law-Focused Education, and the Law in American Society Foundation. Both elementary and secondary school teachers are eligible to attend; two semester hours of graduate credit from the University of Notre Dame are available. For further information, contact: Dr. William Eagen, Regional Director, Law-Focused Education, Box 86, Notre Dame, Indiana 46556 (219-283-6349).

An 11 state sampling of what's available this summer

In **Louisiana**, the Louisiana State University Division of Extra-Mural Teaching and the East Baton Rouge School Board will be sponsoring the "Law Studies Institute" on June 6 through June 24. The institute will be held at Baton Rouge Senior High School, in Baton Rouge, and will focus on ways to teach about the criminal justice system in senior high school. Participants are eligible to receive three hours of extension credit in political science from Louisiana State University; tuition is $60.00. For further information, contact: Mr. Ed Simon, Division of Extra-Mural Teaching, Louisiana State University, Baton Rouge, Louisiana 70803 (504-388-3202).

The University of Maine School of Law will be sponsoring the "Institute of Law and Education" in Portland, **Maine**, from July 5 through July 22. Any secondary school teacher, administrator, or youth aid officer who works with students in grades seven through twelve is eligible to attend. Six graduate credits are offered from the University of Maine at Orano or the College of Education at the University of Maine at Portland-Gorham. The program also qualifies for recertification requirements. For further information, contact: William Julavits, University of Maine School of Law, 246 Deering Avenue, Portland, Maine 04102 (207-773-2981 X367).

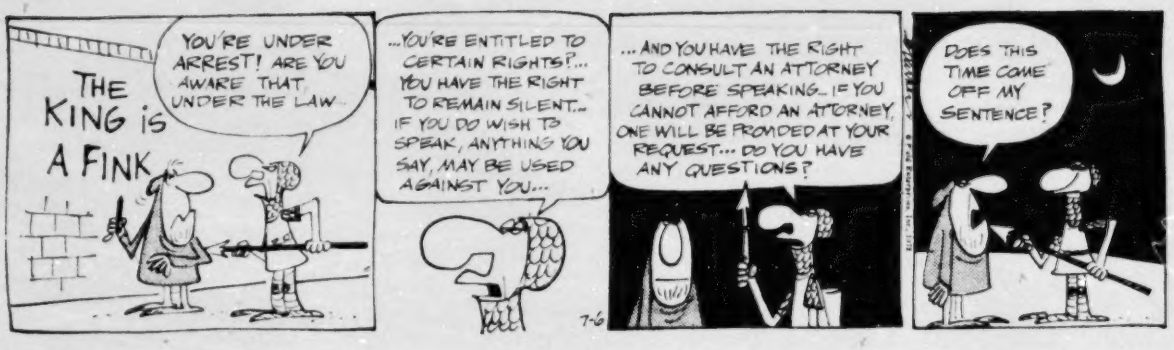
In **Maryland**, the Governor's Commission on Law Enforcement and the Administration of Justice, the Maryland State Bar Association, and the Maryland State Department of Education are co-sponsoring the "Law-Related Education Program for the Schools of Maryland Workshops." Workshops will be held from July 5 through July 22, and again from August 8 through August 26. The programs will cover both elementary and secondary school materials and methods for teaching about law, and participants are able to choose from the following options: a $200.00 stipend; three credits from Western Maryland College, Towson University, or University of Maryland at the normal graduate school rate; or three credits from the Maryland State Department of Education at no cost. Materials and texts will be supplied free of charge to participants. For further information, contact: Jerry Paradis or Rick Miller, 2644 Riva Road, Annapolis, Maryland 21401 (301-224-7584).

"Project ELEMENTARY: Elementary Law Education Meeting Expanding Needs of Teachers and Advancing Responsibility in Youth" will be held from June 27-July 1 in Syracuse, **New York**. Sponsored by the New York State Education Department and the New

JOB OPPORTUNITY

Law-Related Education Program Coordinator

National institute involved in promoting law for layperson programs seeks a Program Coordinator. Duties include: administration and supervision of law education programs, program expansion and development, assisting in curriculum development and teacher training. Applicants must have teaching experience. Graduate degree and/or experience in social studies administration or law preferred. Minimum salary $12,500. Send resume to National Street Law Institute, 605 G Street, N.W. Washington, D.C. 20001.


THE KING IS A FINK
YOU'RE UNDER ARREST! ARE YOU AWARE THAT UNDER THE LAW
...YOU'RE ENTITLED TO CERTAIN RIGHTS?... YOU HAVE THE RIGHT TO REMAIN SILENT... IF YOU DO WISH TO SPEAK, ANYTHING YOU SAY, MAY BE USED AGAINST YOU...
...AND YOU HAVE THE RIGHT TO CONSULT AN ATTORNEY BEFORE SPEAKING... IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE PROVIDED AT YOUR REQUEST... DO YOU HAVE ANY QUESTIONS?
DOES THIS TIME COME OFF MY SENTENCE?
7-6

York State Bar Association, the workshop will be offered for fifth and sixth grade teachers who have not received any previous training in law-related education. Participants will receive in-service credits as well as a small stipend. For further information, contact: James Carroll, Executive Director, Law-Related Activities for Regional Needs, 8032 Trina Circle, Clay, New York 13041 (315-475-1621).

In **Ohio**, "Teaching About Law and Social Studies Programs" will be offered at the University of Cincinnati from June 20-July 15. The institute will be sponsored by the Center for Law-Related Education, University of Cincinnati, Cincinnati Bar Association, Cincinnati-Hamilton County Criminal Justice Regional Planning Unit, the Greater Cincinnati Foundation, and the Proctor & Gamble Foundation. Elementary and secondary school teachers are eligible to attend, and participants will receive eight quarter hours of graduate credit from the University of Cincinnati's College of Education and Home Economics. The in-state tuition is rate is $35.00 per quarter hour; the out-of-state tuition rate is $50.00 per quarter hour. All participants receive free books and materials; tuition scholarships are available for residents of Hamilton County. For further information, contact: David T. Naylor, Executive Director, Center for Law-Related Education, University of Cincinnati, Cincinnati, Ohio 45221 (513-475-3982).

In **Pennsylvania**, "The Law-Related Education Summer Institute" will be held from June 20-July 1 on the campus of Penn State at University Park. The workshop will be sponsored by the Pennsylvania State Department of Education, the Pennsylvania State University College of Education, and the Pennsylvania State University Division of Continuing Education. Elementary and secondary school teachers from Pennsylvania are eligible to attend. Pennsylvania State University will offer two credits for participants; the tuition rate of $100.00 includes free materials. For further information, contact: Dr. Murphy Nelson, 154 Chambers College of Education, Penn State University, University Park, Pennsylvania 16802 (814-865-2430).

In **Rhode Island**, the "Law-Focused Education Workshop for Teachers," sponsored by the Cranston School Department and the Title IV Office of the Rhode Island Department of Education, will be held from June 20-July 1 at Cranston High School East. Secondary school teachers (grades 7-12) are eligible to attend, and three credit hours from the University of Rhode Island may be available. Tuition scholarships are available and free materials will be provided for all participants. For further information, contact: William J. Piacentini, Cranston High School East, 899 Park Avenue, Cranston, Rhode Island 02910 (401-785-0400).

The Virginia State Bar and the Virginia State Department of Education will be sponsoring the "George Mason Institute on Law-Related Education" from June 25 through July 10, in Alexandria, **Virginia**. Elementary school teachers in grades K-6 are eligible to attend, and three to six hours of graduate credit will be available through the George Mason University. State scholarships to attend are available through the Virginia State Department of Education. For further information, contact: Jack Henes, Alexandria City Schools, 1108 Jefferson Street, Alexandria, Virginia 22314 (703-750-6268).

In **Washington**, the "Law-Focused Teacher Education Workshop" will be held from June 20-July 29 at Western Washington State College in Bellingham. Sponsored by Western Washington State College, the Washington State Committee for Law-Related Education, and the Washington Center for Law-Focused Teaching, the workshop will be open to both elementary and secondary school teachers and will offer graduate credits through the Department of Social Studies Education. Participants must pay the required tuition for Western Washington State College's six-week summer session (rates not available as yet). For further information, contact: Dr. Peter Hovenier, Washington Center for Law-Focused Teaching, Miller Hall 304, Western Washington State College, Bellingham, WA 98225 (206-676-3327). —CAK

OPINIONS: CONCURRING & DISSENTING

Awaiting your correspondence

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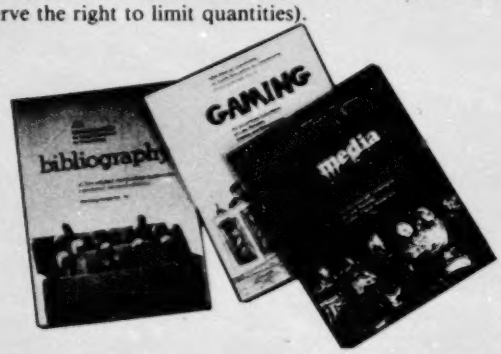
YEFC PUBLICATIONS ON LAW-RELATED EDUCATION

The American Bar Association Special Committee on Youth Education for Citizenship (YEFC) publishes a number of books and booklets on law-related education for elementary and secondary schools.

Reflections on Law-Related Education (1973, 16 pp.) A collection of articles on the rationale and objectives of law-related education. **FREE** (we reserve the right to limit quantities).

Directory of Law-Related Educational Activities (1974, 82 pp.) Information on more than 250 projects throughout the country (NOTE: some entries may be outdated). **FREE** (we reserve the right to limit quantities).



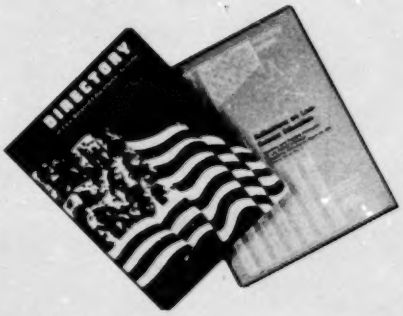
PUBLICATIONS ON PROGRAM DEVELOPMENT

Law-Related Education in America: Guidelines for the Future (1975, 240 pp.) Guidelines for the administration, funding, and pedagogy of law-related education projects. **$2.00**

The $$ Game: A Guidebook on the Funding of Law-Related Educational Programs (1975, 68 pp.) Articles on identifying funding sources, writing funding proposals, securing community support, and institutionalizing programs. **$1.00**

Teaching Teachers About Law: A Guide to Law-Related Teacher Education Programs (1976, 225 pp.) Articles discussing components of successful teacher education efforts and describing a wide variety of law-related teacher education programs. Also contains a special section on elementary teacher education. **$2.00**

SPECIAL DISCOUNT—All three publications on program development for $4.00



CURRICULUM CATALOGUES

Bibliography of Law-Related Curriculum Materials: Annotated (1976, 116 pp.) Descriptions of more than 1,000 books and pamphlets for classrooms, K-12, and teacher reference. **$1.00**

Media: An Annotated Catalogue of Law-Related Audio-Visual Materials (1975, 79 pp.) Descriptions of more than 400 films, filmstrips, and tapes for classrooms, K-12, and teacher reference. **$1.00**

Gaming: An Annotated Catalogue of Law-Related Games and Simulations (1975, 32 pp.) Descriptions of more than 130 games and simulations for classrooms, K-12, and teacher reference. **$1.00**

SPECIAL DISCOUNT—All three catalogues for $2.00

YEFC, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637